

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

* * * * *
UNITED STATES OF AMERICA * CRIMINAL ACTION
* 13-043S
*
VS. * FEBRUARY 10, 2014
*
GERALD SILVA * PROVIDENCE, RI
* * * * *

HEARD BEFORE THE HONORABLE WILLIAM E. SMITH

CHIEF JUDGE

(Jury Trial)

VOLUME III

REDACTED

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2 (Proceedings in the presence of the jury as
3 follows:)

4 THE COURT: Good morning, ladies and gentlemen,
5 and welcome back. I hope you had an enjoyable weekend.
6 Sorry for the delay in getting started this morning. I
7 had a few things I needed to take up with counsel and
8 hopefully will make the remaining part of the trial go
9 more smoothly. So I think we're ready to go forward
10 with Mr. Mann's continued examination of his client,
11 Mr. Silva.

12 Are you ready to go forward, Mr. Mann?

13 MR. MANN: Yes, I am, your Honor.

14 THE COURT: All right. Let's get Mr. Silva back
15 on the witness stand.

16 GERALD SILVA, Resumes stand.

17 THE COURT: You've already been sworn.

18 THE DEFENDANT: Yes.

19 THE COURT: Go ahead, Mr. Mann.

20 MR. MANN: Thank you, your Honor.

21 CONTINUATION OF DIRECT EXAMINATION BY MR. MANN

22 Q. Mr. Silva, can you tell us how old you are?

23 A. Fifty-nine years old.

24 Q. Where were you born, sir?

25 A. Providence, Rhode Island.

1 Q. And where did you grow up?

2 A. East Providence, Rhode Island.

3 Q. With whom?

4 A. My biological parents, my maternal grandparents
5 and my siblings.

6 Q. Can you describe generally the living
7 arrangements.

8 A. I lived upstairs with my mother, my father and my
9 siblings, and my maternal grandparents lived
10 downstairs.

11 Q. What did your mother and father do?

12 A. My mother was a homemaker, and my father worked
13 for Bird and Son as a boiler operator.

14 Q. Where did you go to school?

15 A. Sacred Hearts School and LaSalle Academy.

16 Q. When did you graduate from high school?

17 A. 1972.

18 Q. After high school, did you go to college?

19 A. Yes, I did.

20 Q. Where?

21 A. I went to Providence College for one year pre-med,
22 and then I went to Johnson & Wales Business College.

23 Q. And how long did you go to Johnson & Wales?

24 A. Four years.

25 Q. Did you get any degrees from Johnson & Wales?

1 A. Yes, I did.

2 Q. What degrees?

3 A. I got a baccalaureate in Business Management and
4 associate in Business Management and associate in
5 Business Administration.

6 Q. How did it come to be that you obtained three
7 degrees, sir?

8 A. I got a second associate's when you have options
9 to take other courses, instead of taking liberal arts,
10 I took general sciences course which rendered me a
11 second degree.

12 Q. When did you get your BS in Business Management?

13 A. 1977.

14 Q. Did you get any post-graduate degrees, sir?

15 A. Yes, I did.

16 Q. When?

17 A. I got an MSW in 1994.

18 Q. And --

19 A. That's a master's in Social Work.

20 Q. What was that a master's in?

21 A. Master's in Social Work.

22 Q. Where did you get that degree from?

23 A. Rhode Island College.

24 Q. And you said you got it from 1990 to 1994, why did
25 it take four years?

1 A. I did it part-time while I was working.

2 Q. Did you obtain any professional credentials?

3 A. I have a state license. It's called LICSW, which
4 is Licensed Individual Clinical Social Worker. I also
5 have an ACSW, which is Accredited Clinical Social
6 Worker through the NASW.

7 Q. What is the NASW?

8 A. National Association of Social Workers.

9 Q. Are these certifications current, sir?

10 A. The ACSW is, but the LICSW is not because you have
11 to use a computer to renew it and right now I have no
12 access to a computer.

13 Q. Can you describe generally your childhood.

14 A. Yes. I grew up, as I mentioned, with my parents.
15 They never divorced. I lived in the same house. I was
16 in the Boy Scouts, Little League, Columbus Squires,
17 different organizations like that.

18 Q. Are both your parents still alive?

19 A. My father passed away in 1996. My mom is still
20 alive.

21 Q. Are you still close with her?

22 A. Yes, I am.

23 Q. Now, you said you engaged in some activities as a
24 child including Little League, Columbus Squires and Boy
25 Scouts. What is Columbus Squires?

1 A. Columbus Squires is a youth group organization run
2 by the Knights of Columbus as kind of a junior program.
3 It was an activity-based program.

4 Q. And did you have any positions in that program?

5 A. I was the Chief Columbus Squire for the council in
6 East Providence, and I was the state Chief Columbus
7 Squire for the State of Rhode Island.

8 Q. What did it mean to be the state chief squire?

9 A. You coordinate with all the different councils'
10 activities, the different Columbus Squire programs in
11 the different councils throughout the state.

12 Q. You said you were involved with the Boy Scouts.
13 When did you start out with the Scouts?

14 A. As a Cub Scout.

15 Q. What was the highest rank you attained?

16 A. Eagle scout with a gold palm.

17 Q. What does the "gold palm" mean?

18 A. Beyond rank of eagle scout, there was additional
19 badges I earned, merit badges to get the gold palm.

20 Q. As a Boy Scout, were you associated with a
21 particular troop?

22 A. Troop 29 in East Providence.

23 Q. After you graduated from high school, did you
24 continue your involvement with scouting?

25 A. Yes, I did.

1 Q. How did that happen?

2 A. The scout leader had left. There was no one to
3 replace him, and so I took over the troop. One of the
4 fathers of one the former scouts signed up as scout
5 leader and -- because he couldn't do it either and so I
6 took over the scout troop when I was 18.

7 Q. Now, were you able to formally be the scout master
8 when you were 18?

9 A. No. You can't be scout master at 18. You have to
10 be 21. So I signed up as the assistant scout master.

11 Q. And as the assistant scout master, did you
12 effectively run the troop anyway?

13 A. Yes, I did. I ran the troop.

14 Q. How did that come to be?

15 A. Say again?

16 Q. How was it you were able to run the troop? What
17 happened to the scout master?

18 A. There wasn't anybody available for a scout master.
19 So one of the former scout's father signed the papers
20 as a scout leader and let me run the troop.

21 Q. About how long did you run the troop?

22 A. About ten years.

23 Q. When you were 21, did something change?

24 A. I was able to sign up as scout master.

25 Q. During that ten-year period when you were running

1 the troop, did you also hold positions with any other
2 scout troops?

3 A. Yes. I briefly held position as scout master for
4 Troop 6, New Haven Methodist Church. They had lost
5 their scout leader. They asked me to take over the
6 troop for a while until they could locate a new scout
7 master. They weren't able to do that so we folded
8 their troop into mine.

9 And I also held a position as a committee
10 chairperson for Troop 63 Rehoboth. It was like a
11 brother unit to us. We used to travel with them and do
12 different things with that troop.

13 Q. The troop from Haven Methodist Church, did that
14 actually merge with your troop?

15 A. Yes. They couldn't find a scout leader so
16 whatever boys wanted to stay in scouting they had the
17 opportunity to come in as part of our troop.

18 Q. During the ten years that you were scout master,
19 can you describe some of the activities that your troop
20 did?

21 MR. DONNELLY: Your Honor, I think I'd just
22 object to the relevance at this point. I don't mind
23 some background but --

24 THE COURT: Overruled.

25 A. We actually went to Bermuda. We had our own bus.

1 Went to national jamborees. Traveled to Washington,
2 D.C., various places like that. We had an Indian dance
3 team, a rifle team, a rifle drill team. It was a very
4 active scout troop.

5 Q. Why did you stop being the scout leader after ten
6 years?

7 A. I got a job with the Eckert Foundation.

8 Q. Do you know what happened with your troop after
9 you left?

10 A. About a year later it folded.

11 Q. It what?

12 A. It ended about a year after I left.

13 Q. You said you got a job with the Eckert Foundation.
14 What was the Eckert Foundation?

15 A. The Eckert Foundation was an organization for
16 troubled youth. It was primarily boys at that time.
17 It was established by Mr. and Mrs. Eckert. They had
18 run the Eckert chain down in Florida. They sold their
19 chain. They had a lot of money. They wanted to do
20 something good for the community so they started a
21 residential wilderness treatment program for troubled
22 youth.

23 Q. And what was the population that they addressed?

24 A. The population at the time was all male ranging in
25 age from roughly 12 to up to 18 years of age.

1 THE COURT: Put the mike a little closer to you.

2 THE DEFENDANT: I'm sorry, your Honor.

3 THE COURT: Thank you.

4 Q. How old were you when you started with the Eckert
5 Foundation?

6 A. About 28.

7 Q. Prior to working at Eckert, had you had previous
8 work experience?

9 A. I worked at a New York System and Sear's
10 Department Stores.

11 Q. What was your first position at Eckert?

12 A. As a counselor.

13 Q. Was there a screening process prior to being
14 hired?

15 A. Yes, there was.

16 Q. Can you just briefly summarize it.

17 MR. DONNELLY: I object to this, your Honor.

18 THE COURT: Come up.

19 (Sidebar conference.)

20 THE COURT: All right. What's the substance of
21 this going to be?

22 MR. MANN: That there was a screening process
23 and first there were interviews in Rhode Island and
24 then there was a second part of the process where he
25 gets interviewed by psychologists and psychiatrists and

1 others and then after he was hired there was training.

2 What I'm going to eventually argue to this jury,
3 I hope, is that this is a man that's had 39 years of
4 experience, and if you include the scouting experience
5 in this, which -- difficult population, starting the
6 populations. I already almost provided the
7 populations. But he's been in the system for a long
8 time and that that's a factor that should be considered
9 in assessing who he is and I think this is just part of
10 the background.

11 I think it's probably pretty obvious that
12 anybody that gets hired as a counselor at any of these
13 facilities or programs gets interviewed, goes through a
14 vetting process of some sort.

15 MR. DONNELLY: I think the objection at this
16 point is to the fact that the question is calling for
17 the witness to bootstrap hearsay into the record;
18 namely, people in Florida and the proof that Bob just
19 made. I'm not going to object if he wants to go
20 through his various professional roles with boys, but I
21 think just trying to get into what other people thought
22 or said it's hearsay.

23 THE COURT: Only if it's being admitted for its
24 truth. And I guess --

25 MR. DONNELLY: I don't see any other purpose.

1 MR. MANN: I'm not going to ask him what those
2 people said.

3 THE COURT: Or what they concluded?

4 MR. MANN: No. I'm going to ask him did you go
5 through a screening process, what did the process
6 consist of. And one way or the other I'm going to end
7 up arguing at the end of this case that he interviewed
8 for jobs that involved dealing with either youths or
9 finally adults when he was a probation officer and that
10 by definition that it's --

11 THE COURT: I'm going to allow it. You can deal
12 with it on cross-examination.

13 (End of sidebar conference.)

14 THE COURT: All right. The objection is
15 overruled.

16 Do you remember the last question?

17 THE DEFENDANT: I'd like to have it repeated,
18 please.

19 THE COURT: All right. Go ahead.

20 (Pending question read by the reporter.)

21 A. Yes, there's an interview process here up in Rhode
22 Island. Once you passed -- you went through that
23 interview process, you spent a few days at the camp to
24 be observed. Then I went down to Florida. In Florida
25 there's like a three-day evaluation with various

1 interviews, including psychologists, psychiatrists,
2 social workers and so on.

3 Q. After -- I'm sorry. Have you completed --

4 A. After you went down to Florida. After I was
5 interviewed in Rhode Island, I went down to Florida for
6 a screening down there.

7 Q. And were you hired?

8 A. Yes, I was.

9 Q. And after you were hired, was there training?

10 A. Yes, there was.

11 Q. What was the training?

12 A. The initial training was there's a six-week
13 program where you went down, you were still down in
14 Florida, and you lived as -- the class were called
15 campers. And we lived as a camper, we lived as the
16 client. We lived in the program to get an
17 understanding of what life was like. And two senior
18 counselors came in from other camps to be the adults,
19 so to speak, and the instructors. So there was a
20 six-week training period.

21 MR. MANN: Mr. Silva, could I ask you to speak
22 more into the microphone because at one point --

23 THE DEFENDANT: Yes. Sorry about that.

24 Q. Now, after the training program, did you return to
25 Rhode Island?

1 A. Yes, I did.

2 Q. And what did you do when you returned to Rhode
3 Island?

4 A. I went to help supervise a group of ten boys as a
5 counselor with another counselor.

6 Q. Can you describe the work conditions.

7 A. It was a therapeutic wilderness program and you
8 worked 5 days a week, 24 hours a day with 2 days off.

9 Q. Where did this work actually physically take
10 place?

11 A. It was in Exeter, Rhode Island.

12 Q. Was it a particular -- can you describe the
13 environment?

14 A. It was a therapeutic wilderness environment where
15 the boys lived in semi-permanent tents.

16 Q. Were there times when the work schedule was
17 different than the five days on, two days off?

18 A. Periodically, we would take trips down to like
19 Florida, Georgia, places like that. We'd take canoe
20 trips on the Suwannee River or take hiking trips up in
21 the mountains and that would require me to work six
22 weeks at a time.

23 Q. Were you working full-time during those six weeks?

24 A. Twenty-four-hour days, six, seven days a week, six
25 weeks.

1 Q. When you were doing this kind of work and living
2 at the camp, where were you living?

3 A. In a semi-permanent tent with the group at a camp
4 site.

5 Q. How long were you a counselor?

6 A. As a counselor, about six months.

7 Q. What happened after that?

8 A. I became a senior counselor.

9 Q. What was the job of the senior counselor?

10 A. The senior counselor was the person most
11 responsible for the group and for the training of the
12 more junior counselor, the continued training of.

13 Q. How big was the group?

14 A. Ten boys.

15 Q. How long were you senior counselor?

16 A. About a year.

17 Q. What happened after that?

18 A. I became a group work supervisor.

19 Q. What was that position?

20 A. It was supervising the senior counselors and the
21 regular counselors to make sure that the program was
22 being implemented properly in the program.

23 Q. How long were you a group work counselor?

24 A. About a year or two.

25 Q. What was your next position?

1 A. Program specialist.

2 Q. What was that job?

3 A. To coordinate -- to develop and coordinate the
4 program between the group works supervisor and the
5 program director to make sure the program was
6 therapeutic and being implemented appropriately.

7 Q. How long were you in that position?

8 A. It was about a year or two there, too.

9 Q. Did you move then to another position?

10 A. I moved into the position of program director.

11 Q. Where were you a program director?

12 A. In New Hampshire.

13 Q. Was that still part of the same Eckert Foundation
14 setup?

15 A. Yes, it was.

16 Q. Why did you move to New Hampshire?

17 A. They were starting a new program there from
18 scratch. There was no program in New Hampshire. There
19 was just land. So I went up with the resident director
20 to develop the program, develop the staff.

21 Q. How long did you stay in New Hampshire?

22 A. Two years.

23 Q. Tell us briefly what your duties were in New
24 Hampshire.

25 A. As program director, I was second-in-charge of the

1 overall program, and to get -- ensure the program was
2 safe and secure for the kids and that it was being
3 properly administered through the program specialist
4 and the group work supervisor, the counselors, and we
5 also had educational staff there as well.

6 Q. Did you move from that position after about two
7 years?

8 A. Yes. I returned to Rhode Island as camp director.

9 Q. Where was that, Camp E Hunttee?

10 A. Camp E Hunttee, yep.

11 Q. And what was the job as the camp director at Camp
12 E Hunttee?

13 A. The senior-most person responsible for the
14 operation of the program. I oversaw the staff of about
15 33 people and 56 clients.

16 Q. How long did you remain at Camp E Hunttee as a
17 director?

18 A. Two years.

19 Q. You left after about two years as director?

20 A. Yeah, after about two years.

21 Q. Why did you leave Eckert?

22 A. I had lost confidence in the program.

23 Q. Can you explain what you mean.

24 A. Seemed to become more about the money than about
25 the program itself. We were paid on a per diem basis,

1 which means that if a child is in a bed, we get paid.
2 If the bed is empty, we don't get paid; and it was
3 getting to the point where the referrals weren't what
4 they should be, and I was under a lot of pressure to
5 bring kids into the program that I didn't think were
6 safe for the rest of the population of the camp.

7 Q. How old were you when you left Camp E Huntlee?

8 A. About 35.

9 Q. Where did you go from Camp E Huntlee?

10 A. I went to Kent County Mental Health Center.

11 Q. What is Kent County Mental Health Center?

12 A. It's located in Warwick, Rhode Island.

13 Q. What is it?

14 A. What is it? It's a community-based mental health
15 center that deals with families that have difficulties,
16 especially mental health issues, behavioral issues.

17 Q. What was your job?

18 A. My job was a case manager.

19 Q. What were your duties there as a case manager?

20 A. To work with adolescent males primarily, who were
21 having difficulty in home and school and community.

22 Q. Did you focus on a subpopulation of adolescent
23 males?

24 A. They were usually aggressive adolescent males.

25 Q. Can you tell us what you actually did in this

1 position.

2 A. Basically, my job was to bring the boys out, give
3 them some activities in the community, whether go to
4 the mall, back then they had arcades. We'd go to the
5 arcades. Someplace where they could relax and talk at
6 the same time about their particular issues. And I'd
7 also work with the clinician. A clinician is a
8 licensed therapist who dealt with the parents and the
9 family as a whole.

10 Q. How long did you hold this job?

11 A. For about four or five years roughly.

12 Q. While you were holding this job, were you also
13 going to school?

14 A. Yes, I was.

15 Q. Where was that?

16 A. That was at Rhode Island College for my master's
17 in Social Work.

18 Q. Were you going to school part-time?

19 A. Yes.

20 Q. When you graduated -- when did you graduate from
21 Rhode Island College?

22 A. 1994.

23 Q. At some point after you received your degree from
24 Rhode Island College, did you begin to look for
25 alternative work?

1 A. Yes, I did.

2 Q. Why was that?

3 A. I had my license. I was looking for better pay
4 and different working conditions.

5 Q. Did you get an offer to work shortly after you
6 received your master's from another program?

7 A. Yes. I was hired by Gateway Mental Health Center,
8 which is located in Johnston, Rhode Island. Same type
9 of program as Kent County Mental Health Center.

10 Q. What was your position at Gateway?

11 A. As a clinician. With my master's degree, I was
12 able to do therapy for the family as well as for the
13 youth, for the parents as well.

14 Q. Did you specialize in a certain population there?

15 A. I dealt with -- at that time, I also brought on
16 adolescent females so adolescent females and adolescent
17 males was my primary caseload. And again, I
18 specialized in aggressive adolescent males.

19 Q. At some point, did you assume greater
20 responsibilities at Gateway?

21 A. Yes. I became a team leader.

22 Q. What is a team leader?

23 A. A team leader works with other clinicians to
24 coordinate meetings and information and to be a
25 resource for other clinicians and case managers.

1 Q. And did you also have responsibility for
2 supervising meetings with other people?

3 A. With other clinicians and case managers, yes.

4 Q. How long were you at Gateway?

5 A. Until about 2004.

6 Q. About eight-and-a-half years?

7 A. Roughly, yes.

8 Q. And why did you leave?

9 A. I got a job as a probation officer.

10 Q. And was that with Rhode Island?

11 A. Rhode Island.

12 Q. How did you get to become a probation officer?

13 A. Basically, I took an examination, passed the
14 examination, and then went through an interview
15 process.

16 Q. What did that process cover?

17 A. It covered my experience, my credentials, things
18 like that, and as well as the openings that were
19 available at the Department of Corrections.

20 Q. And did you learn what types of openings were
21 available?

22 A. Yes, I did.

23 Q. What types of openings were available?

24 A. There were two primary positions open. One was
25 for what they call a generic caseload. Generic

1 caseloads have about 430 people on them at that time.

2 And then they had the opening in the Sex Offender Unit,
3 which had a maximum of 70 probationers per caseload.

4 Q. And when you learned that those were the two
5 positions that were available, what was your reaction?

6 A. Well, I didn't know what they could do with 430
7 people on your caseload, and their response was that,
8 well, you take the top 25 and do the best you can. I
9 didn't see that as being productive and so I settled
10 for the sex offender caseload.

11 Q. And at some point, were you notified that you
12 would be offered a position?

13 A. Yes, sir, I was.

14 Q. How did that happen?

15 A. I received a phone call from an administrator at
16 the Department of Corrections. They said that they
17 wanted to hire me for the sex offender caseload.

18 Q. What was your response?

19 A. I told them I needed -- I'd like to have a couple
20 of days to think about it.

21 Q. And how did that all work out?

22 A. They said they needed an immediate answer, but I
23 said I couldn't give an immediate answer so they gave
24 me a day.

25 Q. And then what happened?

1 A. The next day I called them and said I would take
2 the position, but they wanted me to start immediately.
3 And I told them I couldn't start immediately because I
4 had obligations to Gateway. I had clients and I had
5 staff that I was supervising, that I would need two
6 weeks notice for Gateway.

7 Q. Did they work out a solution to allow you to do
8 that?

9 A. They worked out a solution that the Department of
10 Human Resources at the DOC, they hired me, they put me
11 on a two-week leave and then I was able to transition
12 from Gateway effectively to the Department of
13 Corrections.

14 Q. So you then became a probation officer for sex
15 offenders?

16 A. Sex offender caseload, yeah.

17 Q. Can you explain -- and about when was that, sir?

18 A. Around April 2004. April 19th, 2004 was the hire
19 date, but then it was two weeks later that I actually
20 started.

21 Q. Can you explain what training you had for that
22 position.

23 A. They call it NEO training, new employee
24 orientation. And they went through all the procedures
25 for the Department of Corrections but what they hired

1 me for because I had a lot of previous training on sex
2 offenders, plus I had worked with sex offenders and
3 their victims as well in the past.

4 Q. You said you worked with sex offenders. Can you
5 explain that?

6 A. When I was working with a lot of the aggressive
7 adolescent males, some of them had been sexually abused
8 so they were victims, obviously. Some of those who
9 were victims reacted -- what they call reacted, they
10 had sex with someone else and they became offenders.

11 Q. Did you have training to deal with both children
12 who had been sexually abused and those who were
13 reactive to their abuse?

14 A. Yes. Starting even at Eckert Foundation right up
15 through there were various training sessions from
16 various organizations on how to deal with their trauma.

17 Q. Have you had any training, either before or after
18 you became a probation officer dealing with child
19 pornography?

20 A. When I was at Kent County, starting with Kent
21 County and moving forward, I had training regarding
22 child pornography including two sessions with the
23 FBI -- well, with an FBI agent. One was conducted at
24 the Newport Naval Base, sponsored by the NCIS, which is
25 Naval Criminal Investigative Services, that actually

1 showed child pornography and then a second one by the
2 same FBI agent at a different location. But there were
3 multiple trainings throughout my career at various
4 agencies.

5 Q. Now, are you still a probation officer?

6 A. Yes, I am, but I'm on administrative leave until
7 this situation gets corrected.

8 Q. You've been on administrative leave basically
9 since this case started?

10 A. Correct.

11 Q. Did you spend your entire career working as a
12 probation officer working with the sex offender
13 caseload?

14 A. Yes, I did.

15 Q. And were you a probation officer on the day of
16 your arrest?

17 A. Yes, I was.

18 Q. Do you remember what that day was?

19 A. September 27, 2012.

20 Q. Now, you know Ken Bell, don't you?

21 A. I sure do, yes.

22 Q. You recognized him as one of the witnesses who
23 testified, right?

24 A. Yes, I did.

25 Q. And did you know what his job was before his

1 current job?

2 A. He was head of the ICAC unit at the State Police
3 Office. The ICAC being the Internet Crimes Against
4 Children Unit.

5 Q. And did you know him professionally over the
6 years?

7 A. Say again?

8 Q. Did you know then Sergeant Bell professionally
9 over the years?

10 A. Yes, I did.

11 Q. In May of 2012, did you send him an e-mail?

12 A. Yes, I did.

13 MR. MANN: Could I have I think 29, 30 and 31.

14 Q. Now, was this the first e-mail, showing you
15 Exhibit 29, that you sent to Mr. Bell, Sergeant Bell
16 then?

17 A. Yes, it is.

18 Q. And when you sent this e-mail, were you concerned
19 that you wouldn't send information to an incorrect
20 address?

21 A. Yes, I was.

22 Q. Why was that?

23 A. I had some information I believed that was
24 relevant to his job, so to speak, and I wanted to make
25 sure that it didn't go to anybody but him.

1 Q. And where did you send this e-mail from, what
2 e-mail address?

3 A. From my office at the Department of Corrections.

4 Q. It has your name on it?

5 A. Yes, it does, at the top.

6 Q. And you received a response to that e-mail; is
7 that correct?

8 A. Yes, I did.

9 Q. And is this the response that you received?

10 A. Yes, it is.

11 Q. And you know that the heading is on the previous
12 page, right?

13 A. Yes.

14 Q. And after you received this e-mail, did you send
15 Sergeant Bell another e-mail?

16 A. Yes, I did.

17 Q. And this is the second e-mail that you sent
18 Sergeant Bell?

19 A. That is correct.

20 Q. What prompted you to send this e-mail to Sergeant
21 Bell?

22 MR. DONNELLY: For the record, are we talking
23 about 30?

24 MR. MANN: We're talking -- pardon me?

25 MR. DONNELLY: We're on Exhibit 30 now?

1 MR. MANN: Yes. Let me rephrase the question.

2 Q. Exhibit 29 was sent on May 11th, wasn't it, the
3 very first e-mail?

4 A. The very first one, correct.

5 Q. This e-mail was sent on the next day, right?

6 A. Correct.

7 Q. What prompted you to send these e-mails?

8 A. I'd been following a website called Azov or
9 actually been on the website called Azov, which we're
10 all very familiar with now. And to me, it was just
11 fine. No problem, naturist website. But then they had
12 moved into a link that led them into an adult porn site
13 called Boy Joy. And I became very irritated by that
14 because naturist websites do not link into pornography.
15 There's no link between naturism and pornography. And
16 in one of the statements from the Boy Joy website was
17 that some of the boys, not all but some of the boys
18 that were in the adult pornography site had been
19 previously in the Azov movies.

20 And I became irritated by that. I was concerned
21 that if they're moving from naturist, perfectly fine,
22 naturist movies into the adult pornography that they
23 would then lapse into probably, maybe possibly grooming
24 these kids to be in something -- well, into the adult
25 pornography or maybe even into child pornography, which

1 I was very concerned about.

2 I lost my signal to the Azov and to the Boy Joy
3 one. I wasn't able to monitor it. I didn't want to
4 buy the Internet. I don't have the Internet. And I
5 felt that there was something that somebody needed to
6 be monitoring this site in case they did cross the
7 line.

8 Q. Now, when you were arrested, did you volunteer to
9 Mr. Connelly that you had communicated --

10 A. At some point he said to me, Did you tell anybody
11 about the Azov site. And my response was I had sent an
12 e-mail to Sergeant Bell. I said it was after the fact
13 of having lost the site, which now we understand was
14 closed down. And then I said, So I don't think it
15 really mattered.

16 Q. Now, when you sent this e-mail, did you know the
17 Azov site had been closed down?

18 A. I didn't know it was closed down. I thought I had
19 lost my -- I did lose my wi-fi signal for all things,
20 and I wasn't able to get back onto it.

21 Q. At some point, did you suspect the Azov site had
22 been shut down?

23 A. Yes. Sometime later I got a wi-fi signal and went
24 back and there was a thing saying that it was
25 unavailable or something, something or other. And I

1 thought it was maybe shut down at that time.

2 Q. Later you sent the third e-mail?

3 A. Right. That's when I sent the third e-mail.

4 Q. So in terms of timing, you tried to get the Azov
5 website after you sent this e-mail but before the third
6 e-mail?

7 A. That is correct.

8 Q. And then after you tried to access the site and
9 you couldn't, did you have suspicions about what had
10 happened?

11 A. I thought that maybe my suspicions were correct,
12 that behind the scenes -- there's nothing obviously in
13 either one of the films. They were both legitimate,
14 the Azov and the Boy Joy ones were -- they were legal,
15 but I was concerned that something was happening behind
16 the scenes. And if something was happening behind the
17 scenes, then I was hopeful that somebody had caught up
18 with these guys and had done something about it.

19 Q. Now, I want to direct your attention to certain
20 specific parts of this e-mail that's on the screen,
21 okay?

22 A. Correct. Sure.

23 Q. You talk about discovering a website called Azov?

24 A. Correct.

25 Q. How did you discover Azov?

1 A. I had been perusing the Internet looking for
2 different DVDs, and they were linked in through Amazon.
3 I Googled it. Googled Amazon. Amazon linked me into
4 Azov.

5 Q. Then you say, "The only naturist films they have
6 are of nude boys," do you see that?

7 A. Right.

8 Q. Why did you say that?

9 A. Just above it I put down in parentheses -- not
10 parentheses, but I put down that they were European
11 naturist website, quote, unquote, because I was
12 concerned, again, that they had gone from being a pure
13 naturist website into adult pornography and that
14 doesn't happen in naturist sites. That caused me to
15 reassess what is the real purpose of having boys -- it
16 was fine until that point, but once you get into adult
17 pornography, then it raises a different question about
18 what the purpose of these boys are.

19 So I was concerned then at that point in time
20 that they were focusing on boys and maybe they were
21 grooming them for the purpose of getting them into
22 adult pornography later on.

23 Q. Then you say, "I suspect that they do this to
24 provide an air of legitimacy." What did you mean by
25 that?

1 A. Right. So in other words is that they're using
2 Azov, which is the naturist films, and they were using
3 the commercial films to give a sense of respectability
4 to the adult pornography site.

5 Q. At the end of that paragraph you say that, "None
6 of them appear to cross the line into pornography,
7 though I think they definitely flirt with the line."
8 What did you mean by that?

9 A. Right. The Boy Joy one was the "Barely Legal 18."
10 It's now just as soon as these kids turned 18, it seems
11 -- I'm making assumptions on that. As soon as they
12 turn 18, then they lapsed into the adult pornography,
13 and it's like they're flirting with the line there.

14 Again, the concern was that if they go into the
15 adult pornography, these kids are in line with being
16 groomed for the adult pornography. In that grooming
17 process, might they cut that grooming process short and
18 then get into child pornography. I didn't want that to
19 happen.

20 Q. Then you say in the next paragraph that you
21 believe they will cross the line at some point if they
22 haven't already. Do you see that? What did you mean
23 by that?

24 A. Right. Again, behind the scenes. Again, there's
25 nothing visible. Both sites, even the Boy Joy one was

1 absolutely legal. I want to emphasize that because I
2 don't want to get into any problems with that. They
3 were both legal sites. The fact that they linked
4 together a naturist site and an adult site is that if
5 they had crossed the line there was nothing visual in
6 the films themselves but what might be happening in
7 real life behind the scenes when you're not seeing
8 these particular films.

9 Q. You refer to Boy Joy and you refer to it in this
10 e-mail here, right?

11 A. Um-hum. Yes.

12 Q. And what was Boy Joy?

13 A. Boy Joy was the name of the barely legal adult
14 pornography site.

15 Q. Could you link to that from the Azov website?

16 A. Yes. That's what sort of irritated me. If they
17 had put that site separate somewhere and hadn't linked
18 it into the Azov, I wouldn't have probably even known
19 about it.

20 Q. Then you say that you suspect, but you don't have
21 any evidence, that the boys featured in the naturist
22 films are being groomed. I think that's down here.

23 A. Correct. Yeah.

24 Q. Is that the same stuff you had been talking about?

25 A. Yeah. Exactly the same stuff. They were

1 conditioning them to become adult actors.

2 Q. At the end of this communication, you say that you
3 have a really bad feeling about what may be happening
4 to these boys?

5 A. Correct.

6 Q. What did you mean by that?

7 A. It's the same thing that I said earlier. There's
8 never a link between naturism and an adult pornography
9 site. It just doesn't happen. I've never seen it.
10 I've gone to every naturist site in the world, but it
11 just doesn't happen. And my concern was I didn't know
12 what to do about it. Now, I lost my signal. I was not
13 going to get the Internet. I couldn't follow these
14 folks. The best person and the person I trust most in
15 life when it comes to these things was Sergeant Bell,
16 one of the finest people I've ever worked with. And I
17 felt if anybody knew what to do with this or could do
18 anything about this -- you have to vent to somebody,
19 and he's the guy I would vent to on this. I would
20 never vent this to anybody else but him because he's
21 the guy who can deal with stuff like this, if anybody.

22 Q. You mean Sergeant Bell?

23 A. Sergeant Bell is a great guy, yeah, he's tops.

24 Q. Now, after you sent this e-mail, you sent the
25 final e-mail to Sergeant Bell?

1 A. Yes.

2 Q. And is that this e-mail?

3 A. Correct.

4 Q. And that was sent a few weeks, about three or four
5 weeks later, right?

6 A. Whenever I got the wi-fi signal back, yeah, at
7 Starbucks.

8 Q. You indicate in that that you borrowed the wi-fi
9 from Starbucks?

10 A. Yes.

11 Q. How were you getting access to the Internet during
12 this time in 2011? Did you have an Internet connection
13 at your house?

14 A. Yeah. I had a wi-fi signal that was coming into
15 the house.

16 Q. You didn't pay for wi-fi service?

17 A. I'm not going to pay for the Internet, no.

18 Q. How would you access wi-fi?

19 A. On the computer itself it has an automatic signal
20 that it will pick up any open wi-fi that's in the area.

21 Q. Is that how you accessed the Internet?

22 A. Yeah. You turn on the computer, and it sends out
23 a signal to capture any wi-fi that may be out there.

24 Q. Now, on the day that you were arrested, where were
25 you living?

1 A. In my home in Coventry.

2 Q. At some point, did law enforcement come to your
3 residence?

4 A. Yes, they did.

5 Q. Do you remember about what time of the day it was?

6 A. It was early morning.

7 Q. Was it just one law enforcement officer?

8 A. There was a team. A team of people.

9 Q. When they first came into the house, did they tell
10 you why they were there?

11 A. I asked why they were there. They didn't want to
12 answer that question at that time.

13 Q. Did you fairly quickly move into the backyard?

14 A. Yes, we did. After about five or ten minutes.

15 Q. And when you got to the backyard, what happened?

16 A. They started to ask me questions, talk to me. I
17 told them I was not going to answer anything or talk to
18 them until I knew why they were there.

19 Q. Did they tell you?

20 A. Yes. They were quite cordial at that point, and
21 they said that I was being charged with possession of
22 child pornography. I said that's false. It's a false
23 statement.

24 Q. When you said that was false --

25 A. Right. I don't buy child pornography.

1 Q. And did they amplify their comment that you were
2 being charged with child pornography?

3 A. They said that I had bought Azov films, and I
4 said, Yeah, I did buy Azov films, I said, but they're
5 not child pornography, that they were naturist films.

6 Q. And was all this discussion taking place in the
7 backyard?

8 A. Yes, it was.

9 Q. And who was there besides yourself? Was
10 Mr. Connelly present?

11 A. Mr. Connelly and Sergeant Scott Kelly.

12 Q. Were they both there the whole time?

13 A. No. They were in and out, back and forth.

14 Q. Now, you saw various invoices introduced earlier
15 in this trial that had your signature on them, right,
16 or initials, I think, right?

17 A. Yes, I did.

18 Q. Did you initial those invoices, sir?

19 A. Yes, I did.

20 Q. And did Mr. Connelly or his associate ask you
21 where the Azov videos were?

22 A. They either asked or I volunteered. I know I told
23 them where they were, absolutely.

24 Q. At some point -- all this is taking place in the
25 backyard, right, sir?

1 A. That's correct.

2 Q. At some point, were you asked for access to your
3 personal e-mail account?

4 A. Yes, I was.

5 Q. And did you give it to them?

6 A. Yes, I did.

7 Q. Did you have to give them a password or something?

8 A. There was a password, yes.

9 Q. Just a normal password?

10 A. Yes.

11 Q. At some point -- you've seen the PowerPoint that
12 was introduced?

13 A. The PowerPoint, yes.

14 Q. You've seen that document?

15 A. Yes.

16 Q. At some point, were you asked about whether you
17 were working on a presentation, or did that subject
18 come up somehow?

19 A. It came up. I said, Yeah, the only reason I had
20 the Azov was for the presentation.

21 Q. Did you volunteer that you were working on a
22 presentation?

23 A. Yes, I did.

24 Q. And in that context, was there also some
25 discussion about a movie called "The Dancing Boys of

1 Afghanistan"?

2 A. Yes, there was.

3 Q. What was that discussion?

4 A. I mentioned that Azov was only a small portion of
5 the materials that I was gathering for the
6 presentation. And I had mentioned that one of the most
7 recent films that I had purchased was called "The
8 Dancing Boys of Afghanistan." It was a Public
9 Broadcasting System movie about child trafficking in
10 Afghanistan. And I just gave that as an example. I
11 got tons of material for the presentation. It's not
12 just Azov. And I actually said to them I think every
13 police officer should see it. And they went and they
14 got it.

15 Q. When you told them about your presentation, did
16 you tell them whether or not you had obtained
17 permission from the Rhode Island -- let me finish the
18 question -- if you obtained permission from the Rhode
19 Island Department of Probation?

20 A. They asked if I had, and I said I had not.

21 Q. And did you tell them why you had not obtained
22 permission?

23 A. No. There was no need to. It was in the very
24 initial stages of being developed. If I was even going
25 to go through the Department of Corrections, it would

1 have been much later on. As we heard earlier, it's
2 like ten days before you put the presentation on. I
3 didn't have a presentation at that point in time.
4 Plus, I could have done it out of my own professional
5 license and I actually didn't have to do it under a
6 license at all. Anybody can do a presentation if they
7 want to. But it was in the very, very initial stages
8 of development.

9 Q. Was there any discussion about nudism while you
10 were in the backyard?

11 A. Yeah. It came up I guess because the films are
12 nudists films. I am a nudist. I live a nudist
13 lifestyle.

14 Q. And did you give them any details about the way
15 you lived your lifestyle as a nudist?

16 A. I mentioned I had a site up in Connecticut and
17 that I'd spend weekends there when I could get a chance
18 during warmer weather.

19 Q. At some point, was there a discussion about
20 whether you were concerned about boys in the Azov
21 Films -- let me back up.

22 Are you familiar with the term "grooming" in
23 terms of the kind of work that you do?

24 A. Yes.

25 Q. Can you tell us what that is?

1 A. It means you condition a child to feel comfortable
2 with their environment, with their setting, with the
3 people that are there. And then when that child feels
4 comfortable, safe and secure and trusts the people that
5 are with them, then they lapse into encouraging the
6 child to do behaviors the child shouldn't be doing or
7 isn't healthy for the child.

8 Q. Did you say at some point that you were concerned
9 about boys in the Azov films being groomed?

10 A. I had mentioned that earlier, yes.

11 Q. And did you say that to the officers?

12 A. Yes, I did.

13 Q. And why was that, sir, for the same reasons as you
14 set forth in the letter to Ken Bell?

15 A. Right.

16 Q. E-mail to Ken Bell, excuse me.

17 A. Right. Part of the conversation was that I had
18 sent the letter to Ken Bell. I'm not sure exactly
19 where it was in the conversation, but it came up. I
20 said, Yeah, I did have concerns they started this adult
21 porn site and that some of the kids from the Azov films
22 were allegedly into the adult site. And I was
23 concerned because there's no link, again, between
24 naturism and adult pornography, that some of these kids
25 were being groomed to enter into adult pornography.

1 Q. Did you at some point say that the Azov Films may
2 have crossed the line?

3 A. If it went into the adult pornography and if these
4 kids were being groomed for that purpose, was there
5 like a shortcut where these kids were being groomed and
6 they decided to lapse into some kind of adult
7 pornography -- I mean, child pornography or something
8 like that, behind the scenes or whatever.

9 Q. Was there some discussion while you were in the
10 backyard about the producers of Azov going to jail or
11 something like that?

12 A. By that time it had been established the site had
13 been closed down. I inquired if something had happened
14 behind the scenes. Things, again, you don't see in the
15 films but maybe there was something going on behind the
16 scenes where these kids might have been harmed or
17 persuaded to do things they shouldn't be doing. The
18 indication I had was that that had occurred. I said,
19 well -- I asked if the guys were in prison that had
20 produced the films. And my understanding is that they
21 were. And I said, Well, that's good. You know,
22 they're bad guys. If they've hurt those kids, they're
23 bad guys and they should be in jail.

24 Q. Now, when you said, "If they hurt these kids,"
25 were you referring to producing the Azov films?

1 A. No. Not producing the Azov Films, not producing
2 the Boy Joy films, but if there were things behind the
3 scenes, that there was another layer -- they talked
4 about a second layer of films that I didn't get into,
5 didn't find out about, don't know what it's all about.
6 If those second layer of films were -- or even if they
7 weren't but there was something going on and even maybe
8 in a different forum where these kids were involved
9 either -- well, say child pornography or if they were
10 doing something even -- you know, I didn't even think
11 about it until now but child prostitution or something
12 like that, I don't know. Something bad behind the
13 scenes anyways, nothing to do with the Azov films and
14 nothing to do with the Boy Joy films.

15 Q. Did you have a discussion with Mr. Connelly about
16 one of the Azov films that is in evidence that involved
17 a boy and a chicken?

18 A. Yes, I did.

19 Q. Piece of chicken?

20 A. Yes.

21 Q. And what was that discussion, sir?

22 A. You know, I was -- I guess we were both getting a
23 little frustrated because to me Azov films are naturist
24 films. They were saying there's pornography. I said,
25 Just tell me one film where there's anything that's

1 sexual or illegal in it. And Mr. Connelly mentioned,
2 well, the kid sat on some chicken. And I said, Well,
3 he sat on some chicken. I said, It's rude, crude
4 obnoxious, maybe ridiculous. I'll give that. And
5 maybe inappropriate. I'll give that. I said, But it's
6 definitely not sex and it's not illegal. And I
7 repeated, Can you tell me anything, any film that has
8 anything sexual in it.

9 Q. Let me just focus on -- I'm sorryf?

10 A. I said, Or illegal. And he didn't respond.

11 Q. Did you think at that point that the movie
12 involving the young boy and the piece of chicken was
13 pornographic?

14 A. Oh, no. Absolutely not.

15 Q. Did you think it was sexual at all?

16 A. No. That's not sex.

17 Q. Did you tell Mr. Connelly that you felt the
18 children in the Azov films were being exploited?

19 A. I never remember using that term. I remember
20 saying that I was concerned that they might be being
21 groomed for the purpose of adult pornography.

22 Q. So you acknowledge that you were concerned about
23 the fear that they might be being groomed?

24 A. I was definitely concerned about the kids. For
25 sure.

1 Q. Now, did you purchase films from Azov, sir?

2 A. Yes, I did.

3 Q. And do you know about how long back Azov was in
4 existence?

5 A. The catalog went back to about 2005.

6 Q. How did you come into contact with the Azov
7 website?

8 A. When I mentioned earlier I had Googled Amazon, on
9 Amazon I was looking for whatever I was looking for at
10 the time, I actually don't remember, but it linked into
11 Azov and that's how I discovered it. And it had an
12 Amazon discount.

13 Q. Did you buy things from Azov?

14 A. Yes, I did.

15 Q. For what period of time approximately?

16 A. From October of 2010 to April 2011.

17 Q. Were there any indications when you were buying
18 from Azov from the website that made you think that
19 they were other than a naturist website?

20 A. None.

21 Q. Did you have any indications that it was a safe
22 site?

23 A. Yes, I did.

24 Q. What were those, sir?

25 A. There were multiple reasons. They had their

1 introductory, which we've all seen. They had the
2 history of naturism, which we've all seen. It was an
3 open website. They had contact information. There was
4 no hiding anything. It went back to 2005. If
5 something was illegal, it wouldn't be around since
6 2005. That's for sure. There was just a beaucoup of
7 stuff there, looked just like any other naturist
8 website that I've seen.

9 **Q.** Was there anything secretive about the way you
10 ordered materials off the website?

11 **A.** None whatsoever. As a matter of fact, just the
12 opposite. I wanted people to know where I go on the
13 Internet. If you go on the Internet, everybody knows
14 where you are. You might as well be sitting in
15 downtown Providence with your computer because
16 everybody knows where you are when you're on the
17 Internet. I absolutely wanted everyone to know exactly
18 where I went, exactly where I bought, and I brought it
19 exactly to my home so there could be no question about
20 where I went on that website. I absolutely didn't want
21 anybody thinking I went anywhere and purchased anything
22 that I didn't purchase on the Internet.

23 **Q.** You heard either Sergeant Krawczyk or Mr. Ross
24 from the Toronto Police Department say that the website
25 blocked certain police addresses from accessing the

1 website. Did you have any idea of that, sir?

2 A. None. I had no problem getting onto that site
3 whatsoever.

4 Q. You had no idea that they were blocking law
5 enforcement?

6 A. It was as easy as getting on any other naturist
7 website.

8 Q. Is the process similar to as when you went onto
9 Amazon or something like that?

10 A. It was right through Amazon, same as any other
11 website.

12 Q. Was there discounts for certain materials on the
13 website?

14 A. Yeah. It was an Amazon discount. They ran
15 specials every now and then.

16 Q. Now, you've seen before the trial today the
17 various invoices that were introduced into evidence --

18 A. Yes.

19 Q. -- in this case, haven't you?

20 A. Yes, I have.

21 Q. And you've reviewed copies of those, haven't you,
22 sir?

23 A. Yes, I have.

24 Q. You don't dispute that you bought these various
25 films through Azov, do you?

1 A. Absolutely not, no.

2 Q. Did you in preparation for your testimony at some
3 point figure out about how many titles you'd ordered
4 from Azov?

5 A. My total was 69. I know that's different than the
6 prosecution's where they had that double order but -- I
7 didn't double order, but if they want to dispute it,
8 I'm not going to dispute it. I don't care. It's not
9 that big a difference. But my total was 69.

10 Q. Would you agree that there's a second order for
11 six that appears duplicative?

12 A. There were six that were duplicate one day to the
13 next. That seems to me just to be an error.

14 Q. One way or the other, you ordered either 69 or 75?

15 A. At least 69. If they want to say 75, I'm not
16 going to argue over the difference.

17 Q. And were all of those films that you ordered from
18 Azov, Azov production films or were some of them
19 produced by other people?

20 A. Some were what I call commercial because they were
21 other films.

22 Q. Did you calculate before coming in here how many
23 of those films you bought were not from Azov?

24 A. Roughly 21.

25 Q. Would that be 21 out of the 69?

1 A. That's correct.

2 Q. If you included the 75, would it be a higher
3 number that were not from Azov?

4 A. Yes. I didn't figure from that number, though.

5 MR. MANN: Let me just return these three
6 exhibits.

7 Q. Well, the two duplicative ones were the ones for
8 November 5th. Do you see that one, sir?

9 A. No, I don't see it.

10 Q. Do you see it now, sir?

11 A. Yes, I see it now.

12 Q. November 6th, right, sir?

13 A. Correct.

14 Q. And November 5th has seven and November 6th has
15 six, right?

16 A. Correct.

17 Q. And is it fair to say that the six on November 6th
18 are also on the invoice for November 5th?

19 A. That is correct, yes.

20 Q. And out of those six, how many of those six were
21 Azov productions?

22 A. The last two, "Barefooted" and "Capital Fellows."

23 Q. So four were not, right?

24 A. Four were not.

25 Q. So it would be fair to say that based on your

1 previous numbers that if you had 69 individual titles,
2 it was 21 that were not Azov but if you included the
3 75, it would be 25, right?

4 A. I guess that would be true, yes.

5 Q. On the date of your arrest, had you opened all the
6 Azov films that you had ordered?

7 A. No, I had not.

8 Q. Do you know about how many you had not opened?

9 A. There were 13 in the hard cases, and about 4 in
10 the white envelopes.

11 Q. Was Azov the only place you bought DVDs from, sir?

12 A. I buy DVDs from a lot of places.

13 Q. Do you have any estimate of the size of your total
14 DVD collection on the date of your arrest?

15 A. I would say at the minimum would be 500 and go up
16 from there, for sure.

17 Q. What types of films did you buy, sir?

18 A. I bought all kinds of films, mostly horror films
19 because they're the cheapest, but comedy, drama, lots
20 of documentaries about the various wars and stuff and
21 about different events in history besides the wars.
22 Travel movies. Sci-fi is my favorite.

23 Q. Did you also buy naturist films?

24 A. Yes, I did. Yes, I did.

25 Q. What is a naturist film?

1 A. Naturist films are nude recreation involved of all
2 ages, from infant to grandparents.

3 Q. Did you buy -- what are coming-of-age films?

4 A. Coming-of-age films are adolescents that are in
5 trouble, that they have difficult lives. And the films
6 depict -- a lot of them are true-life stories of youth
7 who have had difficulty growing up, and they call them
8 coming-of-age. It's usually teenagers.

9 Q. Did you buy educational films?

10 A. Yes, I did.

11 Q. What types of educational films did you buy?

12 A. On human growth.

13 Q. Pardon?

14 A. On human growth.

15 Q. Why on that subject?

16 A. I wanted information for the presentation. When
17 you do a presentation you don't just do the
18 psychological stuff. Whenever you do a presentation
19 that involves thought, you also bring in issues of
20 physiology because you have to elimination the
21 physiology as an issue before you start dealing with
22 the mental health issues.

23 Q. When you purchased these films from Azov, can you
24 describe the process that you used?

25 A. I used the regular Internet process where you

1 order online, you use your credit card, and they send
2 it to you in the mail.

3 Q. Whose name was the credit card in?

4 A. Mine.

5 Q. Did you get a monthly bill for the credit card?

6 A. Yes, I did.

7 Q. Where was that bill mailed to?

8 A. Sent to my home.

9 Q. The Azov films that you ordered, where did you
10 have those mailed to?

11 A. To my home.

12 Q. Under who's name?

13 A. My name.

14 Q. Did you take any steps at all to conceal your
15 identity when ordering these films?

16 A. Absolutely none.

17 Q. Had you also purchased naturist films from other
18 producers than Azov?

19 A. Yes, I had.

20 Q. Can you identify any of the other producers from
21 whom you purchased naturist films, sir?

22 A. There was one I think that was mentioned earlier.
23 It was "Russian Bare," B-A-R-E. "Euro-vid," E-U-R-O
24 dash V-I-D, and "Odess."

25 Q. Can you briefly summarize or describe the contents

1 of the naturist films you bought from those?

2 A. Again, it's nude recreation from infant to
3 grandparents, all aspects of life. Naturist lifestyle
4 is basically recreation without clothes.

5 Q. Did these films have just young -- do these films
6 have just boys and young boys, or did they have other
7 people in them, too?

8 A. The majority of them had families.

9 Q. Were they nude?

10 A. Yes.

11 Q. When you bought films from other distributors, how
12 did you do that?

13 A. Same process as the ones from Azov. I used my
14 credit card. Sometimes they were ordered through --
15 there's a magazine called "Internaturally," which
16 actually has gone out of business. But they had a
17 catalog there, too, so that would be through the mail.
18 "Russian Bare" was through the same process as Azov.

19 Q. Did you view all the films you purchased?

20 A. Not all, no.

21 Q. Why not?

22 A. I overbuy.

23 Q. Pardon?

24 A. I overbuy. Something is on sale I'll buy it and
25 then hold onto it until some further point.

1 Q. Why did you purchase -- let me back up.

2 Were the Azov Films' naturist films you
3 purchased different than some of the other naturist
4 films?

5 A. These again were primarily was all boys.

6 Q. Why did you purchase Azov films, sir?

7 A. Because I wanted something that was non-sexual,
8 that I felt the Azov films were all male, which is
9 totally non-sexual in my world, and it provided the
10 visual imagery that I wanted for the presentation.

11 And if I had used the commercial films that I
12 already had, they're more intense because they're
13 dealing with the trauma of children and I didn't want
14 the intensity to be in the film that led into the
15 conversation and presentation. I wanted the
16 conversation to be intense, not the film that was
17 introducing the topic for conversation. And the Azov
18 films obviously provided that.

19 Q. Why not use some of the naturist films you already
20 had?

21 A. There were three films from the family films where
22 the men went one place and the women went another
23 place. When the men went one place, it was all male,
24 but there wasn't the variety of activities. There
25 wasn't the consistency of the participants as far as

1 who they were and things like that where Azov had the
2 all-male films, which again to me is very neutral.
3 They had a variety of activities. Some of the
4 participants went from when they were young, say, I
5 don't know, 6, 8, whatever, until 12, 14 or something
6 like that, and gave a flow to the film so that could be
7 shown later on in the presentation.

8 Q. Did you make a conscious decision not to include
9 in your presentation films that depicted nude women or
10 nude girls?

11 A. I wanted to stay away from that. I wanted the
12 conversation to be about the topic that was being
13 presented; and unfortunately, society has stereotyped
14 nude females in a sexual way. And I was concerned that
15 if I used nude females, it would become about sexual
16 issues not about the issues that I wanted to be
17 discussed within the film. I didn't want any sexual
18 content within the film itself.

19 Q. When you sort of were initially conceiving this
20 idea of a presentation, was it in response to questions
21 you had been asked?

22 A. Yes, it was.

23 Q. Can you explain that.

24 A. I've been around a long time. I've been around in
25 social rehab for 30 years. And when people find out

1 especially that I worked with sex offenders, there are
2 two main questions that they always ask. One is how
3 could any adult on the face of the planet look at a
4 child and see them in a sexual way. And number two is
5 with all we know about predators in our society, how
6 can they keep finding victims. And this is the
7 persistent questions that come up over and over again,
8 and this is what, to me, the audience wants to know. I
9 felt that if I'm going to do a presentation, I have to
10 answer their questions first and then present the
11 information that I think is relevant for them to
12 protect themselves and to get to know themselves as
13 well. This is a multifaceted presentation. It wasn't
14 just about Azov. It wasn't just about the initial part
15 of the presentation.

16 Q. What type of -- the format for your presentation
17 was going to be a PowerPoint; is that correct?

18 A. That's correct.

19 Q. And how did you think the Azov films would help
20 you make the presentation in response to these
21 questions?

22 A. In addition to the first two questions that are
23 asked of me quite often, there is a general interest
24 among the people I work with, I work with some very
25 intense law enforcement, CPIs and other folks.

1 Q. What is a CPI?

2 A. I'm sorry. Child protective investigator, which
3 is usually DCYF or some version of that in other
4 states. So they work for DCYF. If there's an assault
5 on a child, they go out just like a lot of police
6 officers. They see the bloody bodies. They see the
7 horrors that happen to children in person. And they
8 have a lot of questions about things as well as to how
9 to get to this point, what could have been done to
10 prevent this from happening, and I try to provide that
11 information on an individual basis but I really wanted
12 to do it on a global basis so there were more people at
13 one time rather than just doing one person at a time.

14 And in answer to your question also, one of the
15 questions they commonly ask is about child pornography.
16 And you can't see child pornography, I'm just telling
17 you right now, it's impossible, you cannot do that.

18 I was hopeful that through presentation through
19 Azov, which is totally legal, totally non-sexual films,
20 that I might be able to help bridge the gap, so to
21 speak, between what is good nudity, what is bad nudity.
22 There's good touch, bad touch. Good nudity, bad
23 nudity. By showing the good nudity I might be able to
24 present to the audience what it is not. By showing
25 them what it is not, you cannot show them what it is

1 but you can show them what it is not in a very subtle
2 way, then they can have better focus on what it may be.
3 That's my thinking on it. Whether it was going to
4 happen or not, that was my thinking on that particular
5 part.

6 And the Azov films, again, being all male,
7 totally non-sexual, I didn't think we'd have a problem
8 with that.

9 Q. Now, you didn't view Azov as child pornography,
10 did you?

11 A. Absolutely not, no.

12 Q. But you don't deny that some people try to access
13 child pornography through the Internet?

14 A. I would imagine that as they do for any child,
15 anywhere, they would try to do that for these films as
16 well.

17 THE COURT: Mr. Mann, would this be a good time
18 to take a break? I just don't know where you are.

19 MR. MANN: This would be a good time to take a
20 break, Judge.

21 THE COURT: Okay. Very good.

22 So ladies and gentlemen, let's take our morning
23 break. You'll find a snack in the jury room waiting
24 for you. Please keep in mind all the instructions I've
25 given you many times. I'll try not to repeat them

1 anymore but you know what they are. And Charlie will
2 show you out. We'll take about ten minutes.

3 (Proceedings out of the presence of the jury as
4 follows:)

5 THE COURT: We'll be in recess for ten minutes.

6 (Recess.)

7 THE COURT: Counsel, I'm handing down the
8 revised jury instructions so that if we get to that
9 point shortly, which I think we may, you have them.

10 Are we ready to bring the jury back in?

11 MR. DONNELLY: Your Honor, if I could address
12 one more time the jury instruction that's on the record
13 that the Government objected to, would the Court be
14 open to any more argument on that based on the
15 Defendant's direct examination thus far, the constant
16 references to it's perfectly legal and the like?

17 THE COURT: I may. I'm thinking about it. And
18 I'll take that up with counsel before we get to the
19 point where I charge the jury.

20 MR. DONNELLY: Thank you, your Honor.

21 THE COURT: So let's bring the jury in.

22 (Proceedings in the presence of the jury as
23 follows:)

24 THE COURT: Welcome back, ladies and gentlemen.
25 And Mr. Mann, you may continue with your

1 examination.

2 MR. MANN: Thank you.

3 Q. Mr. Silva, how far -- at the time of your arrest,
4 how far along were you in completing your proposed
5 presentation?

6 A. I was at the very initial stages of the
7 presentation.

8 Q. And were there reasons why you weren't further
9 along?

10 A. Yes. I had obligations at work that prevented me
11 from spending more time on the presentment.

12 Q. When did you do most of the work on the
13 presentation?

14 A. Nights and weekends.

15 Q. Did you ever ask permission from your employer?

16 A. For --

17 Q. To work on this presentation?

18 A. No, I did not. No.

19 Q. Why not?

20 A. It had nothing to do with the Department of
21 Corrections.

22 Q. In addition to purchasing the DVDs from Azov, did
23 you download certain materials from the Azov web page?

24 A. They had previews and things like that, yes.

25 Q. Were they similar to the things we've seen?

1 A. Yes.

2 Q. Did you ever distribute any of the Azov materials
3 you had with anyone?

4 A. No, I did not.

5 Q. Did you ever share them with anyone?

6 A. No, I did not.

7 Q. Now, you've seen I think it's Exhibit 34, the
8 PowerPoint presentation that was introduced, right?

9 A. The PowerPoint presentation, yes.

10 Q. You created that, right?

11 A. Yes, I did.

12 Q. About how many slides -- let me back up.

13 There were multiple versions on your computer in
14 the thumb drive when it was seized, right?

15 A. Correct.

16 Q. The largest one had about 33 slides on it?

17 A. Correct.

18 Q. How many slides did you anticipate would
19 eventually be in the completed presentation?

20 A. I anticipated it would be a minimum of about a
21 hundred.

22 Q. When did you first begin working on this
23 presentation?

24 A. I've been gathering material for 30 years. I made
25 a determination in 2009 to do something about it and

1 started actively working on it probably around like
2 October 2010.

3 Q. What made you decide that you wanted to start
4 working on such a presentation?

5 A. In 2009, I turned 55. And once a year I do a
6 self-assessment. I reviewed my life. I stop
7 everything. I reviewed my life. Where am I, who am I,
8 am I being the person I'm supposed to be, where am I
9 going, how am I doing on my goals.

10 When I turned 55, I realized that I wasn't very
11 happy, that I lost my sense of humor, that my child
12 dream of winning the lottery and saving the world was
13 not going to happen. There was a lot of death around
14 me, people I knew, people I didn't know. Some people
15 were retiring, actually, too. So I got in touch with
16 my own mortality. So I figured I needed to do
17 something to correct that situation. I'm not getting
18 religious on you because it's not a religious thing,
19 but used the Serenity Prayer, the things you have
20 control over, the things you don't have control over,
21 things you need to know the difference.

22 And from that I decided, if I count the scouting
23 time, I had 40 years of experience roughly to share
24 with people, working with a population nobody wants to
25 work with, people don't want to talk about them, they

1 don't want to hear about them, they don't want to see
2 them. That includes the kids. That includes the kids.
3 So I had a unique perspective on things because I work
4 with people nobody else does. And I got tremendous
5 information from these individuals as to how things
6 could have been different for them, how it might be
7 different for others.

8 So I came to the conclusion the best thing for
9 me to do was not to teach at a university, not to write
10 a book and not to go back into private practice, but to
11 do a seminar, do a training that I could share this
12 30, 40 years worth of information, get it out there,
13 you save the world and I'm going to go travel. So
14 that's how it all came about, and that's how I decided
15 to do the presentation.

16 Q. About when did you first start using the
17 PowerPoint tool as a method to sort of format this?

18 A. Starting somewhere in late 2009, maybe, again,
19 October -- excuse me. Into 2010, October 2010, I was
20 gathering information, putting it on paper and then I
21 got the PowerPoint format itself, the actual
22 PowerPoint. Apparently -- I didn't know it myself but
23 it came up around July of 2011. I'm comfortable with
24 that because I don't know when I got the actual
25 PowerPoint itself, and then I started to implement the

1 stuff that I had compiled onto the computer into the
2 PowerPoint presentation.

3 Q. Was there an initial targeted audience for this
4 presentation?

5 A. Yes, there was. I had targeted -- I had played
6 with it. It's different on the screen that you'll see,
7 but I had targeted law enforcement that does primarily
8 in the field of sex offenders and CPIs because they
9 definitely deal with sex offenders and their victims.
10 And I felt they were the people that would benefit from
11 it most.

12 Q. Did you anticipate producing other presentations
13 for other audiences based in part on the materials in
14 the first presentation?

15 A. Absolutely. As I mentioned earlier, the 40 years
16 of experience that I had wasn't just with sex offenders
17 and their victims. I had worked with families, with
18 schools, a whole variety of people. And I definitely
19 was going to use the core material. This is the big
20 one. And there's core material within that
21 presentation that I could extrapolate out of that and
22 do trainings, not on this, different kind of training,
23 but beneficial for parents, for clinicians, for
24 teachers, for correctional officers and actually for
25 people that are in prison, believe it or not, had

1 things that I wanted to deal with them from my
2 experience as a probation officer so when they get out
3 they might be able to do some things differently. All
4 my presentations were not going to be about the sex
5 crimes, the stuff like that.

6 Q. How did the Azov Films fit into this?

7 A. This particular one?

8 Q. And in general.

9 A. There weren't going to be any other presentations.
10 Azov was strictly for this population because they work
11 in this field. The officers and the CPIs, they deal
12 with a world that you hopefully will never, ever, ever
13 see. It's a dark, dark place that we work in.

14 And Azov is nowhere near concerning to these
15 folks. Where it fit as I mentioned earlier is that it
16 helps address some of the things that they were talking
17 about and you have a visual catalyst to a conversation.
18 I'm a visual learner. A lot of people learn visually.
19 And this gave you a basic insight into the different
20 topics that were at hand. Gives you a visual
21 connection. It's basic, it's innocent, and it's
22 natural. The birth of a conversation. I don't want to
23 get philosophical, but I thought that was pretty cool.

24 And then from that, those conversation were to
25 go into a larger conversation that goes to the very

1 dark places of our society.

2 And then in the second phase of the
3 presentation, we were going to address those things as
4 to how to correct those things and prevent them with
5 their children, their children. Because while they're
6 taking care of you and me, they're neglecting their own
7 kids. You need to know that. Okay?

8 And then the third part of that was going to be
9 where I'd address them, the officers in the room. You
10 cannot protect your children if you do not know who you
11 are, what your biases are, what your blind spots are
12 and the things that you're not willing to see. It goes
13 outside of your bubble of safety. That happens for
14 officers as well. Okay?

15 So it's a multi-phase thing. By using the Azov
16 Films, there's no women in it, there's no females. It
17 stayed out of the sexual realm. If I used some of the
18 commercial films, if you think about the movie "Kids"
19 or "Prince of Tides," those are very intense movies.
20 They're very intense. And I'm not into that kind of
21 intensity. I don't want the intensity in the movie. I
22 want the intensity in the conversation. I believe that
23 Azov had that nice, calm, subtle way of getting into
24 the conversation.

25 MR. MANN: I'd ask this be marked Defendant's D

1 for identification.

2 THE CLERK: D.

3 MR. MANN: D.

4 (Defendant's Exhibit D for ID.)

5 Q. I want to show you what's been marked Defendant's
6 D for identification, sir. Do you recognize what that
7 is?

8 A. Yes, I do.

9 Q. What is that?

10 A. It's the presentation that I had to the point that
11 I had developed it at the time of my arrest.

12 Q. Is that the same presentation --

13 MR. MANN: If I could have Exhibit 34.

14 Q. Are the slides the same as on Exhibit 34, sir?

15 A. They appear to be the same with the addition of
16 the footnotes.

17 Q. What is the difference between the exhibit you're
18 looking at and Exhibit 34?

19 A. Below the item that would be on the screen itself
20 are my notes, my personal notes as to the conversation
21 that was going to take place about those particular
22 topics. Some people call them bullets, some people
23 call them triggers.

24 Q. Were those notes on the presentation on the
25 computer when your computer and thumb drive were

1 seized?

2 A. Yes, they were.

3 MR. MANN: I'd move Exhibit D as a full exhibit.

4 MR. DONNELLY: No objection, your Honor.

5 MR. MANN: Your Honor, I made a motion to
6 introduce Exhibit D as a full exhibit. I don't think
7 the Government has an objection.

8 THE COURT: D? Is there any objection?

9 MR. DONNELLY: No, your Honor.

10 THE COURT: D will be admitted in full.

11 (Defendant's Exhibit D admitted in full.)

12 Q. I want to show you some of these slides and walk
13 our way through some of this presentation, okay, sir?

14 A. Sure.

15 Q. This is the first page, right?

16 A. That is correct.

17 Q. And was there a reason you were emphasizing the
18 male gender?

19 A. Yes. Again, the title and address is one of the
20 questions that are asked of me by a multitude of
21 people, and I wanted to emphasize just on the male
22 gender because the vast majority of people that I
23 worked with were males. I did work with females, but
24 you could even do a 90/10 split, mostly males. And I
25 didn't want to get into the females end of things

1 because I think it would have got -- there would be
2 some mention of it, but the emphasis is going to be on
3 the males because that's my specialty.

4 **Q.** Now, the second slide, that one says something
5 about Red Pill Productions. What does "Red Pill
6 Productions" refer to, sir?

7 **A.** I want to apologize to the prosecution because
8 hopefully they didn't spend a lot of time on this. I
9 made this up. This is kind of a joke screen, in a
10 sense, that on the Red Pill Productions,
11 Unincorporated, there's no such thing. I made that up.
12 It refers to "The Matrix." Because besides these Azov
13 films, there were going to be other films that were not
14 of coming-of-age, but there was going to be "The
15 Matrix," there was going to be "The Simpsons," there
16 was going to be "South Park." There was going to be a
17 whole bunch of films in here as well as "Dateline" and
18 news stories and so forth.

19 But anyways, the Red Pill Productions refers to
20 "The Matrix." In "The Matrix," the movie, if you
21 haven't seen it, it won't make a lot of sense to you,
22 but Morpheus is handing Neo two pills. You take the
23 blue pill, you go back, you live the life you're
24 living now, totally naive about anything that's going
25 on. You take the red pill, you see the world as it is.

1 Once you see the world as it is, there isn't any going
2 back. And even though this was for law enforcement,
3 and CPIs, some might be new. And they need to know,
4 I'm not joking around about this stuff, there's going
5 to be some hardcore things in here. I've seen some
6 horrible things in life that I was going to present. I
7 was assuming I was going to get some stuff back from
8 the audience as well and there was going to be a
9 hardcore discussion. Okay?

10 Once you get into that kind of discussion, you
11 can't say I don't want to notice it anymore, because
12 one you know it, you know it and you're in it. Okay?

13 So it's kind of giving an indication something
14 is coming up here. If you're not prepared for it, you
15 should kind of leave now.

16 **Q.** What did "Ambush Bay" mean?

17 **A.** "Ambush Bay" means this. As I mentioned earlier,
18 in order to, I believe, to educate people is that first
19 you have to answer their questions. If you answer
20 their questions, then you have their respect. That's
21 the two questions I mentioned earlier about how could
22 any adult see any child as a sexual object, which the
23 short answer to that is you can't. If you don't, you
24 cannot do that. It's impossible. And the second one
25 being that how do they continue to find victims when we

1 know they're out there. That's primarily what this is
2 about, this presentation.

3 But I want them to know things that they haven't
4 asked. Again, I know that a lot of officers get
5 divorces. I know a lot of officers' children get into
6 trouble and so forth. While they're protecting us,
7 their children are at risk. I want to help them become
8 aware of that because they're so busy, they're married
9 to their jobs. They can't be married to their jobs and
10 have a family, too. They've got to just take care of
11 their family.

12 The second phase was going to be the things we
13 know about what these bad guys are doing, how do we
14 counter that with our children.

15 And the third part, you can't do that
16 efficiently with your children if you don't know who
17 you are. Okay? So the ultimate part of this whole
18 presentation is not about the guy seducing kids, it's
19 not about protecting your children. It's about who you
20 are, that person in that audience, who are you and what
21 are you doing and what are your limitations based on
22 your blind spots that would prevent you from protecting
23 your own child. That's who I really care about in that
24 audience is the officer, take care of yourself so you
25 can take care of your children, so you can prevent the

1 predators from getting to your child. That's the
2 ambush part. Okay?

3 Q. On Slide 3, first of all, do you see the note
4 below that?

5 A. Yes.

6 Q. Just in general, the difference between this and
7 Exhibit 34 is the existence of these notes?

8 A. Say again?

9 Q. Is the difference between this Exhibit D and --

10 A. The notes below are different, yes.

11 Q. This one has the notes in it, right?

12 A. Correct.

13 Q. And those notes were -- now, was this a slide that
14 you were going to change?

15 A. That's the one I was going to change, yeah. I
16 kept changing the presentation. As you know, there
17 were four different versions. I had come to the
18 conclusion I was just going to do law enforcement and
19 CPIs because I think they're in the dark part of
20 dealing with society that I felt safe that wasn't going
21 to traumatize anybody in that group.

22 Q. The fourth slide indicates people you were not
23 going to invite. Why were you not going to invite
24 certain people?

25 A. Simply because, again, this was going to be a very

1 intense conversation. I don't have vanilla stuff here.
2 This was going to be a hardcore presentation with
3 hardcore information. For example, where it says at
4 the bottom there are people still dealing with their
5 own victimization. You cannot come to a presentation
6 like this and not be traumatized by it if you have not
7 taken care of your own issues so they should not be
8 coming. And survivors are people who have come to
9 terms with their own victimization. Obviously, they
10 could come to a presentation like this and not be
11 traumatized by it.

12 The others, again, they're not into the dark
13 world as far as the law enforcement is and CPIs are,
14 and I wanted to try this out very much so with a safer
15 crowd of people, people who are not going to walk away
16 from there being any worse off because of what they've
17 seen and heard.

18 Q. Now, many of these slides are self-explanatory,
19 aren't they, sir?

20 A. I would say, so, yes.

21 Q. Can we jump forward now to Slide Number 9. Can
22 you tell me what that slide is.

23 A. This is the core concept that was going to go from
24 this particular presentation to every one of the other
25 presentations. If anything happened within the

1 presentation, this is what had to happen. If this
2 didn't occur, the entire presentation was lost. This
3 was going to be about an hour-long discussion about how
4 we develop psychologically. Again, this is not about
5 the physical. There's nothing physical in this
6 presentation. It's about the thought process, how we
7 think, the psychological blocks that we have, how we
8 can recognize them and how we can overcome them.

9 And part of that, again, is where you have the
10 basic physiologies how you grow up as a human body.
11 There's also the average norm. There's no such thing
12 as normal anymore. There's average normal. How people
13 develop intellectually. And its starts off -- we start
14 off in an emotional state, responding to things and
15 then we transition like a DNA through adolescence. If
16 you had the terrible twos, wait until you get to the
17 turbulent teens because they are really a handful.

18 And we always talk about the physical. They
19 have a psychological development happening there, too.
20 And that psychological development is where the
21 intelligence, which was the secondary response when
22 they are younger is now struggling to become the
23 primary response to stimulus. And it is quite
24 turbulent for them. They're losing their childhood.
25 They haven't quite gained their adulthood yet, and

1 there's a real transition that happens. I deal with a
2 lot of adults. There was going to be various versions
3 of this. I have worked with a lot of adults who have
4 not made that transition to the intelligence being the
5 primary response to their situation, and it has to be
6 very difficult lives. So this was going to be an
7 extremely intense presentation about the different
8 aspects of that is how we move in our lives from me to
9 we and take on more of a global concept in our lives.
10 And it's of extreme importance for your children, and
11 it's also for the officers that are involved as well as
12 the guys that are predators. That was an extremely
13 important part of this presentation. If nothing else,
14 that had to be done right.

15 Q. I want to jump forward to Slide 11, just briefly.
16 Slide 11, first, what are you talking about in Slide
17 11?

18 A. Well, again, this was an initial slide. And the
19 reason I put that top one, I actually got that from a
20 different presentation and that's an adult concept,
21 that the body's largest sex organ, some people might
22 dispute it, but it's the skin. Okay? And that is not
23 a child concept. Okay? A child's skin is not sexual
24 to a child. Okay? Children use their skin the same
25 way they use all their other senses is to interact with

1 the world. And it's the concept that's being distorted
2 where now children and adults' perspectives are
3 supposedly being the same and that is not correct.

4 What is happening is that when we're growing
5 up -- I know when I was growing up you have to have
6 human touch. I can't tell you how important that is.
7 And now we've gone from good touch, bad touch to no
8 touch. I think it's extremely dangerous in the way
9 we're raising our children today. We don't have any
10 positive interactions with other people physically, and
11 I think that leaves them vulnerable to the bad guys.

12 And there's a whole bunch of examples about how
13 that's being challenged in our society, and kids
14 becoming more and more untouched. They're becoming the
15 untouchables. Okay?

16 And at the bottom, there's a reference to the
17 Azov film, which would involve wrestling. Boys
18 wrestle, girls hug. That's just kind of a basic
19 concept, but again it goes from good touch, bad touch
20 to no touch.

21 Q. Now, the prosecution, I think, referenced this
22 particular picture.

23 A. Correct.

24 Q. Why did you use that picture?

25 A. It's very simple, very basic but also brings out

1 the point that I wanted to bring out. This is actually
2 from 1887. It's May Bridge or White Bridge or
3 something like that. It's actually a series. They're
4 in textbooks actually for kids where he did a series of
5 films or shots, stills, where a boy would start running
6 or an adult, or whoever. He did thousands of these,
7 and he would just film them as they went along. He was
8 the precursor to movies.

9 And I've used this concept many times just to
10 kind of wake people up. I've been in trainings and
11 I've said to people the natural state of a child is
12 nude. And they go, Ahh. And because you don't want to
13 talk about it and they go, That's true. I said, Yeah,
14 it's a concept we can't address in our society. And I
15 said, We have no place in our society for children to
16 be nude legally or safely anymore and yet it's the
17 natural state of a child. Plus the issue with this is,
18 too, is that some people actually believe that a
19 clothed child is safer than a nude child, which is not
20 true. And we're distorting the reality of the
21 situation as it exists with children. And there's a
22 bigger conversation, obviously, about this, about how
23 the bad guy could come in and take advantage of our
24 fear of dealing with that particular issue.

25 Q. I'm jumping ahead to Slide 22. There's a

1 reference in the footnotes here to Azov necklaces and
2 bracelets. What was that about?

3 A. And this is another place where Azov comes up
4 later on actually. That's my footnote for later on,
5 you see that screen later on. Where this would come
6 into play is that the Azov characters went to a
7 particular location. They've all got bracelets.
8 They're extremely happy about being part of a special
9 group. They all had their bracelets. There was a
10 great enjoyable activity and it was going to emphasize
11 in the conversation about how important it is for kids
12 to belong to something special. And the emphasis is a
13 strong desire to belong to something special that again
14 can be used against them if it's not done
15 appropriately.

16 Q. Now, you have a Slide 24 that's very short.

17 A. Let me explain that.

18 THE COURT: Wait. Wait. Let Mr. Mann finish
19 his question then you can answer.

20 THE DEFENDANT: Thank you, sir.

21 Q. Can you explain this slide.

22 A. I apologize for interrupting.

23 Yeah. Again, this is very basic things. This
24 is more of a teaser frame. Girls are not denser or
25 simpler or anything than boys when it comes to being

1 seduced. Really get that message across. Okay?

2 What this means was it's a reference to that
3 society has aided the bad guy in sexualizing teenage
4 females or young females. And that's a fact, that
5 society is really sexualizing females in our society.
6 They're doing half the work of the perp, and I don't
7 really think we're paying close attention to how we're
8 doing that to the young women in our society, so that
9 women are becoming more vulnerable with the help of
10 society.

11 Q. I want to show you briefly Slide 26. I just want
12 you to notice there are a lot of footnotes on that
13 slide, aren't there, sir?

14 A. That's correct, yes.

15 Q. And in fact, they go over to the next page, don't
16 they? They're all on this page but the printed part
17 would be on the second page, isn't it?

18 A. Yes.

19 Q. Do you see it now, the second page?

20 A. Yes.

21 Q. So my question to you is that just in general, why
22 did you have a slide, for example, like this with so
23 many different notes?

24 A. Again, the slide was just the beginning of the
25 presentation. The presentation was not about the

1 slides. It was the ensuing conversation. And this
2 part of the footnotes is to what would be done orally,
3 not visually in the presentation. There are some
4 references like there was the movie "Doubt" in there.

5 Q. I want to show you I think it's Slide 30. Slide
6 30 has a number of references to Azov. Do you see
7 those?

8 A. Yes, I do.

9 Q. Can you explain what Slide 30 was all about?

10 A. This was just a film that had the concepts that
11 were mentioned earlier. This would either be shown in
12 unison with them or after discussion, however it was
13 going to take place. Again, this was the very
14 beginning of the whole process of developing these 33
15 slides. We were still going to take a long time to get
16 there. But I had designated each one of these topics
17 discussed earlier and added a few more and the various
18 movies that were going to be shown to get the visual
19 stimulus to get the mind thinking and get the catalyst
20 for the conversation going. Mostly Azov, as I
21 mentioned, it was not a frivolous thing that Azov was
22 going to be in here. They were definitely going to be
23 into the presentation, and there's a reference to some
24 of the coming-of-age films that weren't that intense.

25 Q. Can you explain, for example, the first Azov

1 reference is "The Egor."

2 A. As I mentioned earlier --

3 Q. Can you explain what that one is?

4 A. Yes, I can. As I mentioned earlier, some of the
5 family naturist films had some just all male films but
6 they were not consistency of character that we find in
7 Azov. Azov goes from the same character from when he's
8 6 until he's 12 or 14. They've been around a long
9 time, apparently, and they provide that continuity of
10 flow. And "Egor" was going to be part of a
11 conversation of -- this was going to actually end up in
12 a conversation about street gangs, just so you know.
13 So we start off with the Azov film. He starts off
14 young. He's fine with his lifestyle. He's fine with
15 everything. A lot of kids might not be into a naturist
16 lifestyle. He certainly is. He's happy with it, and
17 he's doing well.

18 If you take that to the negative after we get
19 into the conversation with law enforcement and so
20 forth, you end up in a conversation as how do kids end
21 up in gangs. And there are other issues, too.

22 So it's the subtle way you get the basic
23 innocent, natural way of getting into a conversation
24 about something that's really dark down the line. And
25 then of course the next part of the presentation, we'd

1 be talking about what can we do to prevent that
2 happening so we get the kids young, we develop them to
3 where we want them to be.

4 Q. How did the Azov film particularly relate to the
5 first example, the "Egor" example?

6 A. The what, please?

7 Q. How did the Azov films relate particular to the
8 "Egor," the first for example?

9 A. That's what I mentioned. "Egor" was from young to
10 old. He'd been around for a long time in films.

11 Q. Not going through all of these, take the second
12 one, "Bait Boy," what's the relationship with Azov?

13 A. The "Bait Boy" one?

14 Q. Yes.

15 A. "Bait Boy" is again where -- that's my term, just
16 so you know, is what one boy helps another boy in this
17 case feel comfortable with being with a new crowd,
18 being in new surroundings, whatever, and helps him
19 acclimate to the situation, whatever, the environment.
20 And of course that is used by bad guys, some of the
21 examples down below is where people used kids to lure
22 other kids in for sexual gratification.

23 Q. The wrestling one, what was the point of the
24 wrestling one?

25 A. I had mentioned earlier the wrestling was part of

1 the whole process. We all need to be touched. Girls
2 hug; boys wrestle. And in wrestling now comes from
3 again where you had the good touch, you had bad touch
4 and now we're into no touch.

5 Q. Let's skip down to the one where you have "What
6 the hell, Azov." What were you referencing?

7 A. That's the chicken movie right there, you know.
8 And the chicken movie is about the shock effect.
9 Anybody who has worked with kids, if you have a kid and
10 you haven't had this happen yet, it happens with
11 teachers, clinicians and a lot of other people as well,
12 parents in particular, boys will shock you. Okay?
13 They will shock you. I think girls will do it, too,
14 but we're talking about boys. We're going to keep a
15 male focus, if that's all right. I'm not trying to
16 exclude women but we'll keep it a male focus. Boys
17 will shock you. And if you're not prepared for it,
18 then you will react probably in a way you shouldn't do
19 that.

20 What this extrapolates into is intense
21 conversations about what is happening in our society in
22 the United States where this kid is sitting on a
23 chicken being totally gross, really getting it out
24 there, he's really being disgusting and really shocking
25 the audience at what he's doing. In the United States,

1 shock in the United States from teenagers, and think
2 about what's been happening aside, I'm not going to
3 give a whole lot of examples, relates to sex and
4 violence. That's what's happening in our society.
5 There's tons of samples out there as to how our kids
6 are shocking us with those behaviors. And we're in a
7 real bad place in our society when it comes to shock
8 and awe. And I think there needs to be intense
9 conversation as to how can we get that under control,
10 how can we meet this need in a more appropriate manner
11 where we don't end up having kids doing sexual things
12 on the Internet and kids doing sexual things to others
13 and kids shooting up schools and things like that.
14 There's a lot of shock and awe.

15 And on the teacher end, just so you know, this
16 is the dark end on the teacher and parent. And the big
17 thing is don't panic. You know, when kids do shocking
18 things, just don't panic and don't overreact.

19 **Q.** There's a reference in the footnote, "Play Azov
20 introduction to their product."

21 **A.** Yeah, I want to make sure that, again, reinforcing
22 that these are naturist films. I was going to be
23 editing the films. I was very concerned about when I
24 initially did it, I didn't want to be sued by Azov. I
25 didn't want to be sued by some other side of this, any

1 of these other folks. I'm using a lot of commercial
2 films, "Dateline," newspaper articles, advertisements.
3 I'm not paying any royalties to anybody, okay?

4 As part of this, too, as I said, I want to
5 reinforce that even though I edited things in a certain
6 way, and they may look a certain way that maybe I
7 didn't intend them to look, these are naturist films.
8 They've been severely edited. They've been manipulated
9 to some extent. They may look like something they
10 shouldn't look like. That's not the intention. And
11 through that introduction, I just wanted to show that
12 that's where they started off. If they ended up
13 someplace different, that would be my apologies.

14 Q. Now, you said that you were a nudist, right?

15 A. Correct.

16 Q. What is nudism?

17 A. Nudism is recreation without clothes.

18 Q. What is naturalism?

19 A. Just another word for nudism.

20 Q. How long have you been a nudist?

21 A. Since 1995.

22 Q. Do you belong to any nudist associations?

23 A. Yes. The AANR, which is the American Association
24 for Nude Recreation.

25 Q. You already told us you own land in a nudist park.

1 A. Well, it's a site. I don't own the land, but it
2 is a site that I own in Connecticut, yeah.

3 Q. Would you say that you enjoy watching nudist or
4 naturist films?

5 A. Yes.

6 Q. You bought a lot of Azov films, right?

7 A. Correct.

8 Q. Did you ever think that any of the images in those
9 films or the photo packs that came with them were child
10 pornography?

11 A. No, I did not.

12 Q. Did you ever think they were lascivious?

13 A. No.

14 Q. Did you ever find sexual pleasure in viewing any
15 of these photos or films?

16 A. Absolutely not.

17 Q. Another question I should have asked earlier. You
18 talked about being involved in Scouts for about ten
19 years?

20 A. Correct.

21 Q. Did you ever go back to the scouting? Why not?

22 A. When I was working for Eckert there, when you're
23 the director of the program you live on the property.
24 And then program director, too, and program specialist,
25 and group -- the supervisor, that you actually live on

1 property. You're there 365 days a year, 24 hours a
2 day. You're dedicated to that program. When I left
3 that program, there were people I encountered in the
4 community who asked -- you know, we have discussions
5 about scouting and things that we did. They'd ask me
6 to get back in the program. I said, yeah, to me it was
7 like a second job when I was in it and I spent a lot of
8 time on it and I just never wanted to do it again.
9 It's just too time-consuming. I did my time and that's
10 it, you know.

11 Q. Finally, sir, prior to this charge here, have you
12 ever been charged or convicted of any crime?

13 A. No, sir, I have not.

14 MR. MANN: Thank you.

15 That completes my direct examination, your
16 Honor. I just have to return these exhibits to the
17 clerk.

18 THE COURT: All right. Thank you, Mr. Mann.

19 MR. MANN: I think I did move it, yes, D was
20 full.

21 THE COURT: You did. Thank you.

22 Mr. Donnelly, your cross-examination.

23 MR. MANN: Thank you, your Honor.

24 **CROSS-EXAMINATION BY MR. DONNELLY**

25 Q. Mr. Silva, you were a probation officer close to

1 14 years -- excuse me, close to ten years?

2 A. Correct.

3 Q. And during that time you talked a little bit about
4 your work with Detective Bell, correct?

5 A. Correct.

6 Q. Would it be fair to say that during that time you
7 also worked with prosecutors, local law enforcement
8 officials besides just the state police?

9 A. That is correct.

10 Q. Did you go out on home visits with other law
11 enforcement officers besides Sergeant Bell?

12 A. Absolutely, yes, sir.

13 Q. And basically, you've been working with sex
14 offenders your entire time as a probation officer?

15 A. Yes, I have.

16 Q. And you've worked with people -- when we say "sex
17 offenders," people charged with rape of adults; is that
18 correct? First degree sexual assault under Rhode
19 Island law?

20 A. Yes. Any kind of crime.

21 Q. Okay. Would that include working with people who
22 had been convicted of child pornography offenses?

23 A. Yes.

24 Q. And so you're familiar with the laws that govern
25 sexual assault and child pornography; is that right?

1 A. Yes.

2 Q. Now, as you told Mr. Mann, as far as the Azov
3 films, you didn't do that with anybody else, correct,
4 as far as ordering Azov films? You did it all by
5 yourself?

6 A. I did it all by myself.

7 Q. Paid for it with your credit card, correct?

8 A. Correct.

9 Q. And I'm not sure I understood what you were saying
10 on direct so I might have to ask you to repeat some
11 things here, but you bought these Azov films, is it
12 your testimony today that you were doing research and
13 that's why you bought the Azov films?

14 A. I never used the word "research." It's very
15 important. I'm glad you asked that question. I did
16 not use the word "research." For 30 years I've been
17 compiling information and gathering information.
18 Research would have been taken care of later on. Once
19 I had the format done, I knew what I was going to do
20 within the presentation, the materials within that
21 presentation have to be validated and that's when the
22 research would be done.

23 Q. So to try again, you bought the Azov films why?

24 A. To be part of the presentation.

25 Q. And approximately how many of these Azov films

1 that feature nothing but naked boys, how many of those
2 did you buy?

3 A. I think we already discussed that. I think, what
4 did we say -- I had 21 out of 69. You can debate that
5 if you want.

6 Q. Go with your number, 69.

7 A. I'll go 48. I'll go 48. And then if you want to
8 add a couple that we mentioned earlier, that would be
9 fine.

10 Q. And in addition to the Azov films, you bought
11 other films through the Azov Films website, correct?

12 A. Correct.

13 Q. I think on direct examination you characterized
14 those as coming-of-age films; is that correct?

15 A. Yes.

16 Q. Would it be fair to say that all of those films
17 involved minors in one way or the other in the leading
18 roles?

19 A. I would say in the leading role, probably, yes.

20 Q. And would it be fair to say that all of those
21 films depict minors in one state or another of nudity?

22 A. I can't say all of them did, but it's a
23 possibility, very good possibility.

24 MR. DONNELLY: If I could, Ms. Anderson, and
25 Nisshy, if we can bring up the computer, Government's

1 Exhibit 21.

2 Q. I'd like to review the invoices with you, if I
3 could, Mr. Silva.

4 MR. DONNELLY: If we could go to page one of
5 Government Exhibit 21, please.

6 Q. And do you remember this film?

7 A. I saw it one time but --

8 Q. Why did you buy this one?

9 A. This was about a youth, if I recall correctly, who
10 was supposed to go to summer camp. And instead of
11 going to summer camp he stayed home and he had his own
12 little adventure about things.

13 Q. We can agree that this is your first purchase from
14 Azov Films on October 14, 2012; is that right?

15 A. I would say so.

16 Q. What's that?

17 A. I'd say yes.

18 MR. DONNELLY: And if we could go to page three
19 of this exhibit, please, Ms. Anderson.

20 Q. You had a couple of cancelled orders; is that
21 right, Mr. Silva?

22 A. Yes.

23 Q. You've reviewed these invoices, right?

24 A. Hum?

25 Q. There were two cancelled invoices?

1 A. I believe so, yeah.

2 Q. And going to the next one where you actually
3 purchased an item, this movie is called "Tom and Lola,"
4 right?

5 A. Yes.

6 Q. And that film is about basically two kids who have
7 a disease and are living in some kind of bubble
8 environment; right?

9 A. I think that's correct, yeah.

10 Q. And they appear nude throughout the whole movie;
11 is that right?

12 A. I think maybe so, yes.

13 MR. DONNELLY: If we could go to page five,
14 please.

15 Q. Would you agree with me, Mr. Silva, that you
16 purchased -- you had several orders before you
17 purchased your first Azov Film production?

18 A. Yes.

19 Q. This is one of them here. Does this particular
20 invoice bear any videos from Azov Films?

21 A. Yes. "Barefooted" and "Capital Fellows."

22 Q. Would you characterize those films,
23 "Barefooted" and "Capital Fellows" as similar to all the
24 others we saw with large portions of those videos being
25 of naked boys?

1 A. Yes.

2 Q. The other films that appear here, you've heard
3 Mr. Mann asking some of the law enforcement witnesses
4 about the concept of child erotica?

5 A. Yes.

6 Q. Would you characterize some of these other
7 purchases you made, "Tender Cousins," "Les Diabes,"
8 "Daydreams of Youth," would you characterize some of
9 those as child erotica?

10 A. Absolutely not, no. That would not be my
11 definition.

12 MR. DONNELLY: Could we go to page 7, please.

13 Q. Now, on November 11, 2010, you made purchase of a
14 movie called "ATV Adventure," right?

15 A. Right.

16 Q. And that's an Azov film?

17 A. Yes, it is.

18 Q. Why did you purchase this particular film, video?

19 A. Whatever was in that particular video at that time
20 I thought would be consistent with the possibility of
21 being in the presentation, I'm sure.

22 Q. What was it that was in there that you would think
23 would be good for the presentation?

24 A. I haven't memorized all these films. Most of them
25 I've seen one time and fast-forwarded through them so

1 I'm not sure -- again, this would be the different
2 films that were going to be in the presentation. It
3 changed several times.

4 Q. And on this particular one, can we agree that you
5 paid extra to get the photo DVD?

6 A. Yes, it is.

7 Q. Right there?

8 A. Yes, right there. Yes. Yep.

9 Q. That was on November 11th, Veterans Day.

10 MR. DONNELLY: Can we go to page eight, the next
11 page, please.

12 And on this date, two weeks later, can we agree
13 that you bought at least two more Azov films?
14 Referring you to the first one listed, "FKK
15 Waterlogged." We watched that one, so you remember
16 that one, right?

17 A. Is that the one we had here? I don't know the
18 names --

19 Q. You know it was, Mr. Silva.

20 A. Don't tell me what I know. I didn't memorize the
21 different ones by the different names. If we showed it
22 here, I'm fine with that. I'm not challenging anything
23 on that. The "Freedom of Summer" and "The Climber"
24 also I believe are Azov films.

25 Q. You remember the video with the boy massaging the

1 other boy with oil on his back?

2 A. That's fine. Yeah. Sure.

3 Q. Okay. And now, how come you purchased "FKK
4 Waterlogged" on this date?

5 A. On that particular date?

6 Q. Yeah.

7 A. It says it was a Black Friday sale. I'm sure it
8 was on sale.

9 Q. But why that particular video?

10 A. It was probably on sale.

11 Q. Does the fact that when you read in the write-up
12 on that that it talked about how one was a masseuse and
13 would --

14 A. I don't think that was the overriding factor, no.

15 Q. You bought a second Azov DVD on this day, correct?

16 A. The "Freedom of Summer." Talking about the Azov,
17 yes.

18 Q. How about "Scenes from Crimea, Volume 6"?

19 A. Oh, yes. I'm sorry. Correct. I didn't see that
20 one.

21 Q. If you bought an Azov film for your presentation,
22 "FKK Waterlogged," why did you buy "Scenes from Crimea,
23 Volume 6"?

24 A. When I'm doing a presentation, I don't have
25 exactly in mind exactly what film is going to fit in

1 one place. Like you, but in a different manner, I
2 intended to crop these films. My take on things is, is
3 that if you have this many films and you use this much
4 of the film, that's probably what's going to happen in
5 a presentation. If you want my perspective on it, my
6 thinking was this, whether you want to believe it or
7 not, is I know that when things are cropped that they
8 take up a lot less space than the entire presentation.

9 For example, if you have a National Geographic
10 spread in the magazine, you have five pictures. Those
11 five pictures come from, according to the documentary I
12 saw, from 10,000 to 50,000 pictures and you get those
13 five pictures.

14 I was taking elements from each one of these
15 particular films. I didn't know what they were all
16 about until I got them. I knew they were on sale. I
17 knew they were cheap enough to buy them for what I was
18 willing to do, and I was going to take parts of each
19 one or none from some of these things. I did not have
20 the entire sequence figured out at that point. We were
21 at the very preliminary stage of this presentation.
22 You're asking me to give you a final product. I didn't
23 have the final product as I mentioned over and over
24 again. We were in the preliminary phase of the
25 presentation.

1 Q. So your next step upon getting these would be to
2 view them with the prospect of cropping them for your
3 presentation?

4 A. At some point in time, yes.

5 Q. Okay. And what films from October 2010 until the
6 present day have you cropped for your presentation?

7 A. I hadn't cropped those particular ones because I
8 was trying to get the other films in, actually one film
9 that I couldn't even get in was the "Nattelek," we
10 didn't show the entire presentation but there was one
11 that was a commercial film called "Nattelek," or
12 something to that effect. I couldn't get that into the
13 machine. I'm not good with computers. When I had time
14 during that very busy year that I was working at work,
15 I was very dedicated to the issues that were going on
16 there, I would periodically stop and try and get
17 something going on in this presentation.

18 The one thing I was trying to get in was the
19 "Nattelek" film. I could not get that film into that
20 computer. There was no way I could get any other films
21 into that computer at that time without getting that
22 one in. I also had set aside some films in a sequence
23 that I had wanted to get in there and that sequence has
24 been lost since the films were taken. So you
25 interrupted the process and then you want me to give

1 you the finished product. I don't think -- I obviously
2 cannot do that.

3 Q. Are you saying "you" to me?

4 A. No. I'm saying the Government. Not you
5 personally. I apologize. I'm not saying you
6 personally. They came in. They interfered with the
7 process that I was in.

8 Q. The Government by executing a search warrant and
9 arresting you interrupted the process of your editing
10 and cropping; is that correct?

11 A. Of the entire presentation, not just that.

12 Q. Okay. Can we agree that the answer to my question
13 two of the questions ago to how much cropping did you
14 do is none?

15 A. I wouldn't say that's fair. I did do some
16 cropping on the different films but they weren't
17 cropped out of the film. In other words, I identified
18 certain sections of certain films that were going to be
19 cropped for the purpose of being in the presentation.
20 They weren't cropped out of the film, which is what I
21 thought you were talking about, onto the presentation
22 or to any place else because I am not that computer
23 literate. I couldn't even get the "Nattelek" film into
24 the computer. Had I got the "Nattelek" film into the
25 computer, there's a very good possibility a good number

1 of those films would have already been into the
2 presentation.

3 Q. So the fact that you couldn't copy -- you were
4 just trying to copy a film onto your computer?

5 A. That's what I was trying to do.

6 Q. The fact that you couldn't do that prevented you
7 from trying the process on all the other DVDs?

8 A. How could I process the others? I couldn't get
9 the first one in.

10 Q. "Chronicle of a Boy Alone," this non-Azov film,
11 what is that about?

12 A. I'm not sure. I can't remember all these films.
13 It's been over a year or two ago since I've seen that
14 one.

15 Q. Did you buy that one because it had a lengthy nude
16 skinny-dipping scene by many boys?

17 A. Oh, no. No. That's the one where the kid was in
18 like a reform school or something like that. That was
19 more about the trauma experienced by the kid, not
20 anything about -- I'm not as intense about nudity as
21 you are.

22 Q. Okay. On November 25th, Mr. Silva, we've
23 purchased "Barefooted," "Capital Fellows," talking
24 about up to November 25, "ATV Adventure," "FKK
25 Waterlogged" and "Scenes from Crimea, Volume 6."

1 MR. DONNELLY: If we could go to page nine of
2 Government Exhibit 21.

3 Q. Approximately a week later on Thursday, December
4 2nd, 2010, you purchased at least two more Azov films,
5 correct?

6 A. Yes.

7 Q. "Vladik Remembered, Volume 1, Two-Disk Set." You
8 remember seeing that one in the courtroom, right?

9 A. Yes, I did.

10 Q. And "After-School Break"?

11 A. Um-hum. (Affirmative.)

12 Q. We didn't see "After-School Break," right?

13 A. No, we didn't.

14 Q. That's about naked boys, too, I assume?

15 A. All the Azov films were about naked boys.

16 Q. After buying those first five films, why did you
17 need to buy "Vladik Remembered, Volume 1"?

18 A. "Vladik Remembered, Volume 1" I think is an
19 extremely important film because that kid is dead. And
20 part of the presentation was going to be a number of
21 scenes about this particular young man and now he's
22 dead. I think that had an important part in the
23 presentation. I don't know which section that was
24 going to be in because again I had a long thing here,
25 but I knew I wanted to fit that in?

1 Q. Are you testifying that you knew he was dead when
2 you ordered it?

3 A. It's "Vladik Remembered," yeah. Yeah. He was
4 dead.

5 Q. And how did you know he was dead?

6 A. There was an article or -- when the write-ups or
7 something, he had died in a car crash or something.

8 Q. Okay. So one of these boys is gone, right?

9 A. Um-hum. (Affirmative.)

10 Q. So you wanted to purchase this video for that
11 reason?

12 A. I thought that it had an important part -- that
13 particular one I wanted to do a special presentation on
14 him somewhere within the context of the presentation,
15 yes, and I wanted to reference at the end of that he
16 has passed away. I thought it was very relevant.

17 Q. Did you find out he was dead by visiting any other
18 websites?

19 A. By visiting any other websites? When I first went
20 onto Azov, I didn't know what Azov was and I didn't
21 know what it stood for so I did Google Azov, and there
22 was two things that I recall. One said that it was a
23 region of the Ukraine and the second one was there was
24 a memorial book for this kid, this child. I call
25 children kids. I apologize.

1 MR. DONNELLY: Okay. Can we go to the next
2 page, please, Kelly, page 10.

3 Q. You ordered a non-Azov film on December 5th, 2010;
4 is that right?

5 A. Um-hum. (Affirmative.)

6 Q. "La Luna" from 1979?

7 A. Um-hum. (Affirmative.)

8 Q. What's that about?

9 A. If I recall correctly, and I don't want to be held
10 accountable for this because it's been two or three
11 years since I've seen this, and I've only seen it one
12 time, I believe that was about a brother and sister who
13 were in foster care and the brother was trying to take
14 care of the sister.

15 Q. Do you remember this being in a film about a
16 mother engaging in incest with her adolescent son?

17 A. No, I don't remember that actually.

18 MR. DONNELLY: Now, if we could go to page 11,
19 please.

20 Q. Here we are on December 18th, and you bought at
21 least one Azov film that day, right?

22 A. Correct.

23 Q. How many of these are Azovs?

24 A. I'd say the second one, and then the next to last
25 one.

1 Q. Okay. "Black Sea 2.0" and "The Angler."

2 A. Correct.

3 Q. Why did you buy "Black Sea 2.0"?

4 A. Simply because I was buying Azov Films. As I said
5 before, I didn't know the content of the films until
6 you get them. Like I said before, I was just gathering
7 information. I was gathering DVDs. After I got the
8 DVDs, at some point in time I would sort them out,
9 decide where they fit into the presentation, edited
10 them and put them into the presentation.

11 Q. And of course, you deny being sexually attracted
12 to young boys, right, sir?

13 A. Absolutely, sir, I do. And I feel offended by
14 that question.

15 Q. I'm sure.

16 MR. MANN: Your Honor, I ask the "I'm sure" be
17 stricken.

18 THE COURT: I'll strike the comment.

19 MR. DONNELLY: If we could go to the next page,
20 please, Ms. Anderson.

21 Q. And you bought Azov films on Christmas Eve,
22 December 24th of 2010, less than a week after the last
23 purchase, correct?

24 A. Sure.

25 Q. And are the last two the Azov films on this one?

1 A. Yes.

2 Q. "Boy Fights 27 Pugilistic Pals" and "Slam Dunk,"
3 why did you buy these two videos?

4 A. Well, you'd have to be at that time. You're
5 asking me two years later or three years later how I
6 bought those particular ones. But beginning with
7 probably part of a sequencing or just whatever is
8 happening or whatever activities are occurring in the
9 film. I didn't buy any of these for any special reason
10 other than the "Vladik" one when the boy was deceased.

11 Q. Excuse me?

12 A. I said I did not buy these for any special reason.
13 I just bought them because they were there. You see
14 this one was on Christmas sale. They're on sale. I
15 buy them. The price is fine. I don't care. I buy
16 them. Gather the information, sort it out later on.
17 The only one I bought that had any special reason to it
18 that I can recall was the "Vladik" one because I really
19 thought there was a need to put some kind of a special
20 part of the presentation regarding him.

21 MR. DONNELLY: Could we go to page 13, please.

22 Q. "Puppy Dog Tails," the last one, that's an Azov
23 film, right?

24 A. Yes, it is.

25 Q. Lots of naked boys?

1 A. Yes, sir.

2 MR. DONNELLY: Could we go to page 14, please.

3 Q. New Year's Day, you bought quite a few Azov films
4 that day, right?

5 A. Yes, I did.

6 Q. "Boy Fight 28," "Bucharest Holiday," "Black Sea,"
7 "Boys Portfolio" --

8 A. Um-hum. (Affirmative.)

9 Q. -- and so on. We see there, now you went to
10 "Vladik Remembered, Volume 2," correct?

11 A. Um-hum. (Affirmative.) Correct.

12 Q. The second to last one.

13 A. Yes.

14 Q. Why did you feel the need to buy "Vladik
15 Remembered, Volume 2"?

16 A. Because, again, these films were going to be
17 edited. I didn't know what the editing was going to
18 be. I hadn't got into the editing process; and when I
19 got into the editing process, this was just more
20 material for that particular part of the presentation.

21 Q. Did you have specific purposes for your
22 presentation like "Vladik Remembered, Volume 1" has
23 this particular photo; "Vladik Remembered, Volume 2"
24 was going to have this particular photo? Is that why
25 you purchased these?

1 A. I don't understand the concept, what you're even
2 talking about. I've already explained why I was going
3 to put them in there. It wasn't even going to be about
4 Azov. I wasn't even going to mention Azov in the
5 presentation. I was going to show the various clips
6 that I would have edited out of the different DVDs, and
7 I was going to reference them in accordance to the
8 concepts that were being discussed within the
9 presentation. And then at one point in time, whatever
10 topic it was, and I think this is important to
11 understand, maybe because it's my own in touch with
12 mortality, kids die, too. And there was going to be
13 some kind of concept in there in that presentation
14 about the mortality of children and --

15 Q. So you weren't going to use Azov in the
16 presentation, mention Azov? Did I hear that correctly?
17 Is that what you just said?

18 A. The only way Azov was going to be mentioned in
19 there was most likely going to be in the bibliography.
20 Actually, I was going to show the introduction to it at
21 some point as well.

22 Q. Didn't we just look at an entire slide where 9 out
23 of 11 or 12 of the films listed on one your slides that
24 you created had referenced Azov?

25 A. This is again where you said that was the initial

1 slide. Again, you want to finish a presentation. When
2 that slide came up, it wasn't going to say --

3 Q. I don't want to finish anything, Mr. Silva.

4 A. You're trying to twist things here. I'm going to
5 keep reminding you of what the truth is. The truth of
6 the matter is when that slide came up, it wasn't going
7 to say Azov. It was going to say "Wrestling." It was
8 going to say, "Bait Boy." It was going to say whatever
9 the other topic might be. The "Azov" was not going to
10 be there. The "Nattelek" was not going to be there.
11 The "For a Lost Soldier" was not going to be on the
12 screen. The topic was going to be on the screen.

13 That was a reference for me when it came time to
14 edit those films into that particular concept that I
15 would be using an Azov film or I'd be using a
16 commercial film.

17 Q. Now, despite buying all these other Azov films,
18 the truth of the matter is, if we can go to the next
19 page, page 15, is that on January 17th, a couple of
20 weeks after New Year's, you bought two more Azov films,
21 right?

22 A. Correct.

23 Q. And in fact, one of them was one we saw here,
24 "Paul and Calin's Home Video," right, remember that?

25 A. Um-hum. (Affirmative.)

1 Q. And on this occasion for the second time, you
2 bought the bonus photo DVD. Do you agree with that?

3 A. Sure.

4 Q. And why did you buy the bonus photo DVD that day?

5 A. It was probably cheap. Because it was cheaper to
6 buy it that way. And I wasn't sure if I was going to
7 be using action video throughout the presentation.
8 There was possibly going to be an opportunity to show
9 some individual slides as well. I didn't have that
10 down pat. It was cheap enough. It was part of a
11 package deal. It went along with it. I thought it was
12 reasonable, and I bought it.

13 Q. Did you buy it because it gave you a still image
14 of these naked boys sitting with their legs splayed and
15 their genitals prominently featured?

16 A. No. I didn't buy it for that reason.

17 Q. Did you have particular reasons as to the videos
18 that are listed there, why you bought those for your
19 presentation?

20 A. I was still gathering information. I hadn't got
21 the format down.

22 MR. DONNELLY: The next page, please.

23 Q. We were just on January 17th. Five days later,
24 January 22, you buy another Azov DVD set called "FKK
25 Ranch," right?

1 A. Correct.

2 Q. More about naked boys?

3 A. Sure. They're all about naked boys.

4 MR. DONNELLY: And if we could go to the next
5 page, please, page 17. Thank you.

6 Q. Here we are now on February 15th of 2011, and here
7 actually you buy nothing but Azov films, right?

8 A. Correct.

9 Q. Would you agree with me that pretty much from this
10 date until you stopped buying films from azovfilms.com
11 you bought nothing but Azov Film Productions?

12 A. I'll take your word for that.

13 Q. This is the day you bought the chicken cupcake
14 video, right, "Cutting Room Floor"?

15 A. Um-hum. (Affirmative.)

16 Q. On this date also, referring you right here,
17 Mr. Silva, you bought a bonus photo DVD, correct?

18 A. Correct.

19 Q. Why did you buy the still images from that video?

20 A. As I've explained numerous times to you already, I
21 wasn't sure if I was going to use action film or stills
22 or both. The editing process hadn't taken place yet.

23 Q. Okay. Earlier I asked you about a movie called
24 "Boy Fights 27." Here we have "Boy Fights 28" and "Boy
25 Fights 2." Why did you buy those?

1 A. Same answer I've given to you throughout the
2 process. I hadn't finished the editing process,
3 gathering information. I know when you take this much
4 information, you break it down into that much
5 information. The more information you have this way,
6 the more depth you can have here, the more precise
7 you're going to be when you edit it.

8 Q. And is it your testimony to this jury -- now,
9 we're into late February. You started buying Azov
10 films, I think your first one was either late October
11 or early November. We're into late February at this
12 point, two, three, four months later, whatever it is.
13 So you know exactly what's on these Azov films. You've
14 watched some of the ones that you previously purchased,
15 correct?

16 A. Um-hum. (Affirmative.)

17 Q. You know exactly what they're all about, right?

18 A. When you say "watch them," a lot of them were
19 fast-forwarded, but, yes, I have an idea what's in
20 there, correct.

21 Q. Is it your testimony here today that you watched
22 the videos the way we did in court at four-speed?

23 A. I watched a good portion at least double speed.
24 These things are boring as all get out, for sure.

25 Q. That's your testimony. Did you ever watch them at

1 regular speed?

2 A. Sure did. Some of them I did. Absolutely. And
3 then even the ones I fast-forwarded, sometimes there
4 were parts I watched at regular speed.

5 MR. DONNELLY: Could we go to page 18, please.

6 Q. And here we have two more Azov films, "Water Boys"
7 and "The River Escape"?

8 A. Um-hum. (Affirmative.)

9 Q. That's on February 25?

10 A. Um-hum. (Affirmative.)

11 Q. And I'm going to assume that there's no
12 particularized reason why you bought those.

13 A. Just gathering the information, to see what we can
14 come up with so we can put it in the presentation.

15 Q. And as we've talked about, you've watched these
16 films as they've come in. Not all of them, but --

17 A. That's not true. Yes.

18 Q. Not all of them, but you've watched them. You
19 know what's on them. You know what they're about.

20 A. I watched some of them, yes, that's correct.

21 THE COURT: One at a time.

22 MR. DONNELLY: I'm sorry.

23 Q. Are you testifying today that you were gathering
24 different bits of information as you went from "Boy
25 Fights 22" to "Boy Fights 23" or whatever it is, after

1 you watched those, did you say, "I got two different
2 things out of that movie"?

3 A. I hadn't watched them all, as you know.

4 Q. Did you get it out of any of them?

5 A. Say what you said again, because I'm not even sure
6 what you're talking about anymore.

7 Q. You keep saying that you bought these because each
8 one you were going to use the information from those
9 DVDs.

10 A. No. No. No. If you want to go back, we'll
11 check. I said either it was use some information from
12 these; I may have used none of the information from
13 some of these films. I did not know the exact content
14 of it. You're assuming I got these, I opened them and
15 watched them right away. There were 13 left, as we
16 talked about, that I hadn't watched plus some others in
17 sleeves.

18 Q. Thirteen unopened that you didn't watch, right?

19 A. Right.

20 Q. How many were opened?

21 A. The rest of them --

22 Q. Forty something, right?

23 A. Well, whatever. It wasn't 40 something. Are you
24 talking about Azov or are you talking all the films?

25 Q. Just Azov films.

1 A. If you take 13 away from 48, it's not forty
2 something.

3 Q. Okay. I apologize. Whatever your number is, it's
4 enough.

5 A. It's enough. It's plenty.

6 Q. And you're watching some of these as they come in,
7 right?

8 A. I'm watching some of them, but you're assuming I'm
9 watching them all as they come in. Some of them would
10 just go in a pile until later on when I had the
11 opportunity to edit them. And you're assuming that
12 I've watched every one of these when they came in and
13 that is absolutely false.

14 Q. I'm just trying to give us one example of a piece
15 of information that's different from one of these
16 videos to the other that would help you in your
17 presentation.

18 A. We didn't know what that was until the
19 presentation was --

20 Q. One of the reasons you don't know what it was is
21 these kids are speaking Romanian, right?

22 A. There are some subtitles to it, just so you know.
23 As a matter of fact, the dialogue was very promising in
24 it where they had the interview process where the kids
25 were saying their mothers were aware of what they were

1 doing.

2 Q. You had subtitles there?

3 A. Yep. We had subtitles. We saw that.

4 Q. Were there subtitles anywhere else in these
5 videos?

6 A. Yes, there were.

7 MR. DONNELLY: We're almost done with this. So
8 if we could just go to the next page, please.

9 Q. And here, on March 7th, you buy "Raw Rewind,"
10 correct?

11 A. Correct.

12 Q. And we saw some of that, I think?

13 A. Yes. I believe we did.

14 Q. And "Boy Fights 26"?

15 A. Um-hum. (Affirmative.)

16 Q. Did that give you any different information than
17 all the other "Boy Fights" or any of these other Azov
18 films?

19 A. The answer is the same. Once I became committed
20 to using Azov films in the presentation, I began to buy
21 Azov films. As you saw, I bought the coming-of-age
22 films first. They were more informative to me,
23 educational to me, and I used those in my work
24 practice, the coming-of-age films. And then when I
25 committed myself to using the Azov films within the

1 presentation, I started buying the Azov films. I
2 didn't know the exact content. I was buying as many I
3 felt that was practical, which was I overbought. The
4 minute I overbought -- I overbuy everything so this is
5 not new in my life. I had not edited them. I had not
6 seen them when they came in. They went in a pile for
7 the most part. Eventually, I was going to get to the
8 point where I could edit them all, come up with the
9 story line that I wanted to, come up with the exact
10 films that I wanted to for the exact concepts, run my
11 presentation, and then I was going to put them into the
12 presentation and they would have flowed. There would
13 be no discussion about this. You'd see exactly how
14 they fit into the presentation in what I think would
15 have been a phenomenal event.

16 MR. DONNELLY: One moment, please, your Honor.

17 THE COURT: Yes.

18 (Pause.)

19 Q. Now, you mentioned about how you didn't -- you
20 weren't going to buy the Internet, access to the
21 Internet?

22 A. That's correct.

23 Q. You're single, correct?

24 A. That's correct.

25 Q. Do you have any children?

1 A. No, I do not.

2 Q. So living alone at this house, right -- is it your
3 parents' house or something like that, or is that your
4 house?

5 A. It's my house.

6 Q. Okay. What I meant is did it come from family?

7 A. I bought it.

8 Q. And was there a reason why you didn't buy Internet
9 access?

10 A. I think Internet should be free.

11 Q. Okay. And so in fact, when you said you told
12 Detective Bell in the e-mail you sent him "I have a
13 weak wi-fi signal sometimes" --

14 A. No. I said lost my wi-fi.

15 Q. "I lost my wi-fi." And you would sit in your
16 house, and you had a wi-fi signal that you were able to
17 get onto, correct?

18 A. That's correct.

19 Q. And you know today whose wi-fi signal that was,
20 right?

21 A. They claim it was a neighbor's, but, you know,
22 that name never came up on my --

23 Q. Do you know the neighbor?

24 A. I know him. Yes, I do.

25 Q. Mr. Ritchotte, I think is his name?

1 A. I just call him Al.

2 Q. Did you know the IP address on your orders from
3 Azov went to his wireless router?

4 A. I absolutely did not know that. The day that
5 Mr. O'Connor told me I had used the neighbor's wi-fi, I
6 told him that I did not know that I had done that
7 because it never showed up in my -- I don't know
8 computers, but I had never seen anything saying that I
9 was using his. I'm not saying it didn't happen, but it
10 was a shock to me when he told me it was my neighbor's.

11 Q. Whose wi-fi did you think you were using while you
12 sat at home?

13 A. Ironically, there was a Tim Horton's at the end of
14 the street. I don't know how wi-fi works, but when I
15 went to Starbucks and I used theirs, that was actually
16 in West Warwick, when I came home it was still on my
17 computer and it said Starbucks on it.

18 And the only thing I could figure since wi-fi I
19 don't think goes that far, down at the end of my --
20 down at the end of the road a bit, there was a Tim
21 Horton's. And the Tim Horton's had a wi-fi. So I
22 said, well, they must be using the same signal as the
23 other guys. I don't know anything about wi-fi except
24 you can go there and get it for free. On my computer
25 it still said Starbucks. On the left-hand side it said

1 Starbucks. I figured I was getting it from Tim
2 Horton's. Okay? That's what I thought. They came in
3 and said, Nope, you're not getting it from there;
4 you're getting it from your neighbor. And I was
5 startled. I absolutely was startled. I swear to God I
6 did not know it was his signal.

7 But like I said, when I open my computer it has
8 a radar, it goes out, it picks up the closest wi-fi
9 signal.

10 Q. And it asks you if you want to connect to a
11 certain network, right?

12 A. It connects automatically.

13 Q. But you knew you were getting Internet from
14 somewhere else besides your own house, right?

15 A. Yeah. I didn't have anything in my house, yeah.

16 Q. And you certainly had never gone to your neighbor
17 and asked for his authorization?

18 A. I absolutely did not. Nope. Didn't even know I
19 was using his. How could I ask?

20 Q. Now, in your June 3rd e-mail to Sergeant Bell, you
21 congratulated him for taking the Azov Films website
22 down, right?

23 A. Yes, I did.

24 Q. Now, when did you first become aware that the
25 website was down?

1 A. When I went back to look for it the second time at
2 Starbucks. I lost it at the house. I lost my wi-fi.
3 I lost everything. It wasn't just them. And then to
4 -- I was going to get the wi-fi. I was not going to
5 get the Internet. Then after I sent the alleged doc to
6 Sergeant Bell, I went to Starbucks at some point later
7 on. They weren't there. They had that screen that was
8 mentioned earlier about something, error or something.
9 And I figured maybe there was something going on behind
10 the scenes, and maybe they did take them down and maybe
11 Sergeant Bell had something to do with it.

12 Q. And so your reason for not buying your own
13 Internet access and using others, you said you think it
14 should be free?

15 A. It's supposed to be, yeah.

16 Q. And that had nothing to do with trying to conceal
17 your own activity from anybody else?

18 A. I didn't conceal my activity from anybody else.

19 Q. Because you made a big statement on direct
20 examination how you want everybody to know exactly
21 where you went on the Internet.

22 A. Absolutely.

23 Q. But if anybody -- you know about Internet protocol
24 addresses and how they go to a geographical address,
25 correct?

1 A. No. I don't know. I don't know any of that
2 stuff. Don't say I know that stuff.

3 Q. Well, I'm asking you. Is it your testimony you
4 don't know about that?

5 THE COURT: One at a time. One at a time.

6 A. All I know is -- all I know is there's a wi-fi
7 signal out there. You can pick it up for free. I
8 don't know anything about all this other stuff you're
9 talking about.

10 Q. And you're a state probation officer working with
11 child sex offenders, correct?

12 A. Yes, I am.

13 Q. Who have computer issues, correct?

14 A. I don't deal with computer issues. Sergeant Bell
15 has already dealt with that.

16 Q. You help enforce or notify the police if there's a
17 violation of the court's conditions about computer use
18 by your clients, right?

19 A. No. That's done by ICAC. Sergeant Bell is very
20 clear that it's ICAC that does the computers.
21 Probation officers do not.

22 Q. So if you do a home visit just to see if somebody
23 is there, not for computer reasons, and you see that
24 one of your clients has child pornography up on his
25 computer, you don't notify anybody?

1 A. Well, if that had happened, yes, I would have.

2 MR. DONNELLY: Could we bring up Government
3 Exhibit 30, please, page one.

4 Q. And this is your -- I know it's hard to read here.
5 You recognize this as being your e-mail to Mr. Bell?

6 A. Yes.

7 Q. And would it be fair to say here that in this
8 e-mail of May 12th, 2011, you're trying to explain to
9 Ken Bell that Azov is a bad website?

10 A. I didn't say Azov was a bad site. That's a false
11 statement. I'm saying it is not a bad site. I'm not
12 even saying that the Boy Joy is a bad website. I'm
13 saying you don't connect the two. Naturism does not
14 link into adult pornography. If the Boy Joy site had
15 not been linked into the Azov site, if it had just
16 cropped up somewhere else, I would never have known
17 about it; I would never have had a problem with the
18 situation.

19 Q. And Boy Joy is all male pornography --

20 A. What I saw was all male.

21 Q. -- that depicts graphic sexual acts?

22 A. It's adult pornography.

23 Q. Were you ever concerned about that, that that
24 might violate the obscenity laws?

25 A. No. That was adult. It was adult. Because I've

1 dealt with the barely legal stuff when we did some of
2 the investigations with ICAC before. These kids had
3 the barely legal 18-year-olds. There's another site
4 that I mentioned in the presentation that we didn't
5 show you. I don't think I'll mention it, but there's
6 another site that the guy was on this was very similar
7 to that. I know it's legal because we weren't able to
8 prosecute on barely legal 18. If they're 18, they're
9 18. That's the way it goes.

10 MR. DONNELLY: Can you blow up the second
11 paragraph, the one that begins "FYI." The next two
12 paragraphs will be fine.

13 Q. Now, here you're saying, "I'm not saying Azov" --
14 you just testified that you said, "I wasn't trying to
15 tell them Azov was a bad website," but then you go on
16 to tell him that "They claim to be European naturists;
17 however, it's all of nude boys."

18 A. Correct.

19 Q. That bothered you?

20 A. It bothered me in the sense that I said early --
21 I've already answered this -- as I said earlier, what
22 bothered me was is that I had no problem with Azov
23 before Boy Joy showed up. When the Boy Joy showed up,
24 it gave me a different perspective on what was
25 happening with these boys. There's nothing in Azov

1 that was illegal or immoral or anything else like that.
2 It was fine. My concern was now the emphasis was on
3 boys, and they said in the advertisement where it was
4 for the Boy Joy that some, not all the boys that were
5 in Azov, were in the adult films but some had -- I
6 don't want to say graduated, but moved into the adult
7 films that were also represented in Azov.

8 So that was my concern is now it's not -- I
9 mean, the big question was going to come up is, is it
10 illegal for you to groom -- and I don't know the answer
11 to this -- a child to do something as an adult. That's
12 up for -- that's a major discussion. I don't know.

13 Q. Mr. Silva, is it your testimony here today that
14 you weren't trying to cover your tracks with this
15 e-mail, right?

16 A. This e-mail was private to Sergeant Bell. I even
17 said this had nothing to do with anything.

18 Q. What do you mean "private"?

19 A. What I'm saying is I only communicate with him. I
20 work in a very, very dark field. You don't know what
21 goes on out there. You don't know the things that I've
22 dealt with. I have dealt with the darkest part of
23 society no one wants to go into.

24 MR. DONNELLY: Your Honor, could the witness be
25 directed to answer the question without lecturing.

1 THE COURT: Time out here a second.

2 So just answer the questions that you're asked.

3 THE WITNESS: Okay. I'm sorry, your Honor.

4 THE COURT: Reask your question.

5 THE WITNESS: Thank you, your Honor.

6 MR. DONNELLY: Could I have it read back.

7 (Pending question read by the reporter.)

8 A. To directly answer, as you recall, the first
9 e-mail I sent I wanted to make sure went directly to
10 him. He's my confidant. He's the person I trust most
11 when it comes to certain issues in my life. Sergeant
12 Bell is one of the most fantastic human beings I've
13 ever seen in my life, the most top professional people.
14 I trust him. I need someone that I can confide in. I
15 can't live in a bubble.

16 I could not do anything about these particular
17 films. I had no idea what to do about them. If there
18 was something going on behind the scenes with these
19 kids, I had no way of addressing it. I cleared my
20 conscience by saying, well -- it's probably a selfish
21 thing, but I really believed if anybody could do
22 anything about it, it would be Sergeant Bell. He's a
23 top pro. I sent the information to him. I stated what
24 my concerns were. I stated very clearly that I don't
25 want to get sued. I don't want anybody saying that I

1 said this. There's nothing wrong with Azov. There's
2 nothing wrong with Boy Joy, but when you connect the
3 two I have concerns there might be a grooming process
4 that's taking place where these boys are being groomed
5 to be in the adult films, which I'm not sure is --
6 that's flirting with the line. I was concerned if
7 they're doing that, if they're now transformed into
8 these adults films --

9 Q. Mr. Silva, I was just asking you what you meant by
10 the word "private."

11 A. I'm just saying. Okay.

12 Q. Now, you had this great relationship with Ken
13 Bell, correct?

14 A. He's a great guy.

15 Q. And you didn't confide in him.

16 MR. DONNELLY: Could we see the whole page
17 again.

18 Q. You didn't confide in him that you had purchased
19 Azov products, correct?

20 A. It had nothing to do with it.

21 Q. Why wouldn't you tell him that?

22 A. Why would I?

23 Q. You didn't tell him you spend \$1,589 at that
24 website.

25 A. Why is that his business? I had no problem with

1 the Azov site itself.

2 Q. You can tell from this e-mail you had no problems.

3 A. Excuse me. You keep trying to twist -- I have a
4 feeling you keep trying to twist things away from the
5 truth of the matter. The truth of the matter is I had
6 no problem with the Azov site, and I had no problem
7 with the Boy Joy site. I had a problem with linking
8 the two. If somebody bought Azov, fine. If somebody
9 bought Boy Joy, fine. They're both fine. They're
10 legal. They're non-sexual. They're fine. They are
11 what they are. But I don't think they should be linked
12 together. They made the link, Azov and Boy Joy did,
13 between the two. I didn't make that link. That link
14 is what caused me to reflect back on the Azov films,
15 that even though those films themselves are absolutely
16 fine, that something might be happening behind the
17 scenes. I did not know what to do. I felt very
18 helpless about that. I didn't know who to contact, so
19 I contacted the person I knew had the most skill when
20 it came to the Internet, and that was Sergeant Bell,
21 one of the best people I've ever met in my life.

22 Q. All right. I'd like to turn to your presentation.
23 How many presentations have you done in your ten-year
24 career?

25 A. This is it. This was going to be the big one.

1 Q. This was the big one, right?

2 A. That said, this was my legacy right here.

3 Q. So you had never actually done a presentation in
4 the ten years that you were a State of Rhode Island
5 probation officer?

6 A. Absolutely not, nope.

7 Q. And you agree with the testimony of Ms. Imbriglio
8 that you never sought permission to research this
9 matter?

10 A. Absolutely not.

11 Q. And never sought permission to get -- to make the
12 presentation?

13 A. Didn't need to do it. Didn't do it.

14 Q. And is it your testimony that you -- in this
15 future big presentation, you were not going to be
16 representing yourself as a probation officer?

17 A. Absolutely not. And there's a reason for that,
18 too.

19 Q. Did you ever speak to anybody that you worked with
20 about the fact that you were buying these Azov films
21 and you had this presentation in mind?

22 A. I didn't speak to anything about buying Azov
23 films, but people would constantly say to me, You need
24 to go back to private practice part-time, you need to
25 teach at a university, you need to write a book. I

1 didn't say that. This came from other people. Whether
2 you want to believe it or not, that's a fact.

3 Q. Did you ever --

4 A. And periodically I would say to the people -- you
5 asked the question. Periodically I would say to the
6 folks is that I'm not going to do those things. I want
7 to do something on a grander scale. I have this
8 dynamite presentation that I should be working on but
9 I'm not. I need to motivate myself. I don't want to
10 do things on an individual basis, small scale anymore.
11 I want to get it all out there so I can do my mea culpa
12 of the information I have so that I can get on with my
13 life so I can travel and I can be happy again. That's
14 what it was about.

15 Q. Okay.

16 A. I keep saying it over and over again to you.

17 Q. And so the answer to the question of if I asked
18 you did you tell anybody in the Department of
19 Corrections that you were working on this big
20 presentation, the answer is?

21 A. No.

22 Q. Okay. You had a direct supervisor, Jean Embrey.
23 Did you tell her?

24 A. Absolutely not, no.

25 Q. And do you agree with Mr. Psyllos, who was here,

1 who said your PowerPoint was created in July of 2011?

2 No reason to dispute that?

3 A. I have no reason to dispute that. The film
4 version of it, yes. Not the part that was on paper, of
5 course.

6 Q. What do you mean "the film version"?

7 A. Well, in other words, I didn't just sit there that
8 day and put it on the PowerPoint. I had prepared the
9 information to put into the PowerPoint. I didn't just
10 PowerPoint it. I got the PowerPoint when I felt I had
11 enough material to start the PowerPoint presentation to
12 put it on I call it film. You know, onto the slides.

13 Q. Did you do any actual research for this
14 presentation?

15 A. I don't want to use the word "research." I had
16 been gathering information for 30 years. Actually,
17 probably 40 if you want to count the times when I was a
18 scout leader. Constantly gathering articles,
19 "Dateline" things, "60 Minutes." I had boxes of videos
20 from different programs, different stories related to
21 the development and protection of children. So the
22 research I would say is a false word to use, not an
23 accurate word. Research would come in --

24 Q. When you say "false," you mean when you said that
25 to Inspector --

1 A. I'll say this. I was not doing research.

2 Q. Let me ask the question. When you told Inspector
3 Connelly you were doing research for a presentation for
4 work --

5 A. Oh, no. That's a false statement right there. I
6 did not say I was doing research for work. What I said
7 was I was gathering information. I'm very careful
8 about using that word "research" because it's not
9 something I had done yet. I was gathering information
10 for a presentation for law enforcement, CPIs. I never
11 said I was using it for work because there's a good
12 possibility I was never going to use it for work. I
13 was going to either use it under my license, I can use
14 it under my own name.

15 I can't say I was never going to tell DOC about
16 it, but I didn't have to notify them about it until I
17 had a presentation and I had to notify them ten days
18 before that.

19 But when you mentioned the word "research,"
20 which you seem to be kind of hung up on, when I got to
21 the research phase of this, I was going to have to hire
22 an intern to assist with this, because I do not know
23 how to do that effectively. What would take me a year
24 to find on the Internet would probably take an intern a
25 few minutes. So I was actually going to spend more

1 money on this rather than the Azov films.

2 And then I was also going to put on --

3 THE COURT: Wait. Let Mr. Donnelly ask another
4 question.

5 THE WITNESS: Thank you, your Honor. I have a
6 tendency -- I'm just irritated.

7 Q. We can agree that you didn't do any scholarly
8 research for this, correct?

9 A. Scholarly research in saying the information I had
10 might be scholarly, but I didn't go back and verify to
11 see if that information was still valid.

12 Q. Scholarly meaning reading from experts in the
13 field, that sort of thing.

14 A. Definitely. I've been to many, many seminars.
15 Those seminars have many, many documents that you get
16 from them. So yes, it has scholarly information.

17 Q. The documents you mentioned were "Dateline," "60
18 Minutes," that kind of thing?

19 A. There's so much stuff that I had. I didn't
20 mention it all, but yes, I've been to numerous
21 seminars. We said that earlier in the interviews and
22 this conversation here that I happened to have here,
23 that part of that was I've been to a lot of trainings.
24 From those trainings you get materials. I had boxes of
25 those materials. It was not sorted out. That was

1 going to be part of the sorting process. When you use
2 that information from the previous trainings, you have
3 to document where you got the information but you also
4 have to research to see if that information is still
5 relevant. I had not got to the research phase.

6 MR. DONNELLY: Your Honor, we have an electronic
7 copy of Defendant's Exhibit D, if we can bring it up.

8 THE COURT: All right.

9 MR. DONNELLY: Ms. Anderson -- we've covered
10 some of these slides -- if we could go to Slide 12, I
11 think it would be. And go to the slide show, if we
12 could.

13 Q. Now, this was your slide, your words, right?

14 A. Um-hum. (Affirmative.)

15 Q. And were you trying to sort of bring the sort of
16 nudist/naturist philosophy into the presentation?

17 A. I would imagine there's a subtle part of that, but
18 I was really addressing the fear that we have about
19 nudity.

20 MR. DONNELLY: Next slide, please.

21 One moment, please.

22 Q. And "The natural state of the child is..." the
23 next slide is, this is the picture you told us about,
24 you chose this to show us -- you wanted to start a
25 discussion about nudity of children?

1 A. Initially it's a statement of fact that that gets
2 the shock effect going. I've already done this to
3 other people; and even in trainings I've said, well,
4 you know the natural state of a child is nude. It's
5 always like when you talk about nudity in our world
6 it's like you got to shut down, close your eyes, you
7 know, hear, see no evil, that kind of stuff. We have
8 to understand that's the natural state of a child. We
9 impose adult standards on children. When we look at
10 children and we see things, we put our standards onto
11 them, and we say you should be clothed when a kid
12 says -- we condition them to make our comfort level.
13 The bad guys understand the natural state of a child is
14 nude. Okay? And they will use that against us if
15 we're not aware of that. Okay?

16 If we make nudity evil, and it may have some
17 underpinnings of naturism because I know how it's not
18 dangerous, then we make our children more vulnerable to
19 these bad guys. Clothing does not protect a child.
20 You've got to very much understand that. It does not.
21 We do not protect our children simply because they're
22 wearing clothes.

23 MR. DONNELLY: Could we go to Slide 26, please.

24 Mr. Mann, I think this slide had some extensive
25 notes. Do you need the notes brought up?

1 MR. MANN: I'd defer to the Government.

2 Q. I wanted to ask you -- you recall this slide,
3 Mr. Silva?

4 A. Yes, I do.

5 Q. The second bulleted point says, "If the
6 perpetrator's manipulations fail, he will simply take
7 the child and if this means killing the entire family"?

8 A. Correct.

9 Q. Is that part of your research?

10 A. That was an article that came -- or a news program
11 that was on TV about a guy who came across state lines.
12 He was traveling past a home. He saw the children
13 playing in their bathing suits in front of the house,
14 became obsessed with them. He waited until nighttime.
15 He went in and shot the entire family.

16 Sorry. This is not for you. Okay? I'm sorry,
17 but this -- you know, shot the entire family. Took the
18 boy, took the girl, had sex with the boy, didn't like
19 it, killed the boy and kept the girl.

20 Q. And where did that take place?

21 A. Out the West Coast somewhere. I had to research
22 that and get that article back up.

23 MR. DONNELLY: Could we go to Slide 30, please.

24 Q. You recall this slide, your testimony on this?

25 A. Sure.

1 Q. Are you referring here -- each time it says "Azov"
2 in this bulleted list, were you referring to a
3 particular Azov film?

4 A. At one time I had particular films listed in
5 there. Like you have the "Egor" one in there, I had
6 different ones in there. It kept changing, kept
7 changing. So I didn't have the flow that I wanted to
8 so I just took it all out and put "Azov" in there.

9 When it came up, this is what you asked earlier,
10 when it came up all you would see is "Caretaking,
11 Selecting a Victim, Starting Them Young, Bait Boy,
12 Wrestling" and so forth. All these other things would
13 not have been there. Even like "Live" wouldn't have
14 been there and "Nattelek" at the top wouldn't have been
15 there.

16 Q. And you created this PowerPoint in July of 2011,
17 some time after you found out that the Azov website was
18 down?

19 A. Correct.

20 Q. And it would be testimony today you didn't create
21 the PowerPoint again just to cover your tracks about
22 your purchases from Azov?

23 A. The PowerPoint was not used to cover any tracks.
24 I had no tracks to cover.

25 MR. DONNELLY: Can we go to Slide 32, please.

1 Q. This is one we did not explore on direct
2 examination. You recall this slide, right?

3 A. Yes, I do.

4 Q. These are your words?

5 A. I wrote those down, yeah. They're not my words.
6 These are the sites that I went to, yeah.

7 Q. These are sites you went to?

8 A. When you talk about research, this is part of the
9 research, if you want to call it. On the site Twinks,
10 T-W-I-N-K-S, the one I was not going to tell you about,
11 okay, this --

12 THE COURT: I think the question was -- I forgot
13 what the question was.

14 Could you read the question back.

15 (Pending question read by the reporter.)

16 THE COURT: So are those your words? That was
17 the question, are those your words?

18 A. What do you mean by "my words"?

19 Q. Well, who typed up this slide?

20 A. I typed them up.

21 Q. And you went to a site called "Milk Boys"?

22 A. Well, I went to the site Twinks, which linked into
23 Milk Boys and Boy Love News, yes.

24 Q. Okay. And what's "Twinks" about?

25 A. Twinks is we had done -- well, the ICAC person did

1 it, an investigation into one of our probationers and
2 he had gone to this particular site along with some
3 other sites. I didn't know what Twinks meant, to tell
4 you the truth. I still don't think I really know. But
5 it was a site that I think had young men on it that
6 were younger than 18 but because it said it was an
7 adult, there was nothing the authorities could do about
8 it. And so part of this is -- again, I'm talking to
9 police officers, what else is out there. Well, Twinks
10 is out there. If you want to see what real child
11 pornography looks like -- this wasn't for you, it's for
12 them -- this is as close as you're going to get to it
13 is this particular site. While I was at that site,
14 they had other things that linked in. And something
15 that's very scary out there is your kids know about
16 these sites. There are sites out there --

17 MR. DONNELLY: Your Honor, I'd --

18 THE WITNESS: I'm sorry, your Honor.

19 THE COURT: Just try to focus on the questions.

20 THE WITNESS: I am sorry. There's so much
21 information. I apologize. There's so much information
22 you need to know.

23 THE COURT: Okay. Stop. Stop. Just listen to
24 the questions and try to answer the questions put to
25 you.

1 THE WITNESS: Thank you, your Honor. I'll try
2 to do that.

3 Q. Tell us about why you wrote down on this slide
4 "Boy Love News."

5 A. It was one of the links that was incorporated into
6 the Twinks site. I had never heard of it in my entire
7 life. I had never heard of Milk Boys. So before you
8 ask on that, never heard of it. Very informative about
9 this.

10 Q. How frequently did you go to these websites?

11 A. I know I tried to find -- a long time I tried to
12 find Twinks because I was looking up Twinkies, which
13 wasn't right. And I don't think I spent a lot of time
14 on it, on any one of those.

15 Q. Boy Love News you're quite familiar with, though,
16 right?

17 A. I'm not quite familiar with any either one of
18 these. All I can tell you is that one of them had --
19 there was like news bulletins on boys, and there was
20 another one where you could -- they could link up
21 with -- the way I guess they put it was gay boys can
22 link up with men in your area. Don't worry about it.
23 We got good guys out there that are going to link up
24 with you. Something to that effect.

25 Q. Did you go to Boy Love News so that you could find

1 news about the investigation of Azov Films?

2 A. I did not, no.

3 Q. Did you go to Boy Love News -- you're denying that
4 you went to it quite a bit, Mr. Silva?

5 A. I don't know how often I went to that. I know it
6 was part of the -- I only remember going one time.

7 Q. Were you linked to it from a site called "Boy
8 Wickie"? Are you familiar with that site?

9 A. I thought I came in it from Twinks.

10 Q. Are you familiar with Boy Wickie?

11 A. I am not familiar with Boy Wickie.

12 Q. Or other boy-lover websites?

13 A. I'm not familiar with them, no.

14 Q. Would you deny that you went to the Boy Love News
15 website some 28 times?

16 A. I would say that would be most -- if it's there,
17 it's there, but if I went to Boy Love News that many
18 times, it would have to be while I was looking for
19 Twinks.

20 MR. DONNELLY: Could I have one moment, please,
21 your Honor.

22 THE COURT: Yes.

23 (Pause.)

24 Q. Now, several times on direct you said, Mr. Silva,
25 that the Azov films were perfectly legal and naturist

1 or nudist films; correct?

2 A. Correct.

3 Q. And can we agree that in the films that form the
4 charged videos in this case, that those films -- we
5 don't see any families, correct?

6 A. Correct.

7 Q. We don't see any moms?

8 A. Correct.

9 Q. We don't see any dads?

10 A. Correct.

11 Q. We don't see any sisters?

12 A. That's correct.

13 Q. We don't even see any organized sporting activity,
14 right? We don't see volleyball, baseball?

15 A. No, there are some of them that do. Some of the
16 films did have organized sports and activities. The
17 ones you showed --

18 Q. Not much, right?

19 A. Huh?

20 Q. Not much?

21 A. Not in the ones you showed.

22 Q. How about the ones your own lawyer showed?

23 A. Which ones were they? The ones he showed --

24 Q. He showed them all.

25 A. Those are the ones that you had, right? My lawyer

1 showed the films that you put into evidence. Is that
2 correct?

3 THE COURT: You don't ask him questions. He
4 asks you questions.

5 THE WITNESS: I'm just trying to get
6 clarification of what he's talking about.

7 THE COURT: Do you want to pursue that?

8 Q. We can agree that you had some nudist films that
9 you had obtained in your house, right?

10 A. Correct.

11 Q. And the ones that were not Azov films had family
12 activities with full families, like you said, from
13 young to old, right?

14 A. Correct.

15 Q. And they're at nudist resorts and that sort of
16 thing, correct?

17 A. Sometimes, yes.

18 Q. But as far as these Azov films, there's no
19 families present, right?

20 A. No families.

21 Q. There's no plot to the story, right, to these
22 films?

23 A. Plot, I don't know what you mean by "plot." It's
24 the same as all the other naturist films. They don't
25 have a plot either. I mean, they have a theme. The

1 theme is a naturist lifestyle.

2 MR. DONNELLY: Nothing further.

3 THE COURT: Thank you, Mr. Donnelly.

4 Mr. Mann, do you have some cross-examination?

5 MR. MANN: A little bit, yes.

6 THE COURT: How long do you expect?

7 MR. MANN: Five, ten minutes? Maybe not even
8 that long.

9 THE COURT: That's fine. Come on up.

10 Ladies and gentlemen, you know that I had you
11 order lunch because I was not sure about whether we
12 would be getting the case to you for deliberations
13 before lunch or after, and it's obvious that we're
14 going to get the case to you after lunch.

15 So your lunch is waiting for you in the jury
16 room. I want to complete the examination of the
17 witness before you have your lunch. We'll probably
18 have a shortened lunch hour since we bought the lunch
19 for you. We'll shorten the lunch hour and then come
20 back and do what we need to do after lunch. All right?

21 Go ahead, Mr. Mann.

22 **REDIRECT EXAMINATION BY MR. MANN**

23 Q. In the cross-examination, there was reference to a
24 film called "Nattelek," or something?

25 A. "Nattelek," yes.

1 Q. That's referenced to the PowerPoint, right? What
2 is that?

3 A. It's a commercial film. That film was going to be
4 used to demonstrate -- there aren't that many female
5 sex offenders, the theory being is that adult female
6 sex offenders use caretaking as the mechanism for
7 molesting children. In this particular film, there is
8 no molestation of the child, just so you know, but
9 there was a caretaking scene that you could see was
10 very representative if a person wanted to cross the
11 line they could have crossed the line and very easily
12 seduced the young man that was in the film.

13 It was very well done and very representative of
14 how if a woman wanted to, because we're always talking
15 about guys, have to talk about women sometimes, if a
16 woman wanted to molest the child, this child through
17 the caretaking process it would have been very easy to
18 do it.

19 Q. You were asked about what your role was as a
20 probation officer with respect to searching computers.
21 Do you remember that line of questioning, sir?

22 A. Yes.

23 Q. You were the probation officer for sex offenders,
24 right?

25 A. Yes, I was.

1 Q. Did you have any authority to search a computer in
2 your capacity as a probation officer?

3 A. No, I did not.

4 Q. If you saw something suspect on a computer that
5 happened to be on when you walked into a house --
6 first, did that ever happen?

7 A. No. They don't -- if there's a knock on the door,
8 they're turning off their computer.

9 Q. Did you have any authority to tell them to turn on
10 their computer?

11 A. I did not.

12 Q. Was there an established protocol for what you
13 were supposed to do if you had suspicions about an
14 offender's use of a computer?

15 A. I would contact ICAC.

16 Q. And ICAC was what?

17 A. Internet Crimes Against Children.

18 Q. And who would then conduct the search of the
19 computer?

20 A. It would either be the state police or somebody
21 trained by them that would go out with the probation
22 officer. We'd actually have to get consent, just so
23 you know. We can't just walk in and get their computer
24 and open it up. We have to get consent.

25 Q. Or if you didn't get consent, would you have to

1 use a sworn law enforcement official?

2 A. We would have to get some kind of a warrant or
3 something. I mean, there has to be grounds for the
4 warrant, obviously, not just suspicion. I mean, there
5 would have to be some --

6 Q. You never participated in the actual search of the
7 computer?

8 A. Never in ten years.

9 Q. I thought you started to answer a question about
10 why you were not going to make this presentation as a
11 probation officer. Was there a reason you were not
12 going to make the PowerPoint presentation as a
13 probation officer?

14 A. Yes. Because whenever you have any kind of nudity
15 or anything like that, I'm not naive, you're going to
16 get -- you can get challenged. There are lots --
17 remember what I said earlier, no politically correct
18 people? Because politically correct people have a
19 tendency to cause difficulties when it comes to nudity
20 in films and things like that.

21 I looked at DOC. I don't always like what's
22 going on there, but I want to protect them as well. I
23 wanted this on me, on my license or on me personally so
24 there would be nobody else involved. If there was any
25 kind of a challenge to these films because of the

1 nudity, then they would have to come and talk to me
2 about it. No one else would be involved. And I bought
3 these -- I said earlier, I bought these films. I put
4 in the presentation that I am solely responsible for
5 the contents of that presentation. If there's any
6 problems with it, you come talk to me. You don't talk
7 to DOC. You don't talk to anybody else. You come talk
8 to me. Here we are.

9 Q. When you used the Internet, do you know what an IP
10 address is?

11 A. If I'm using my computer, what that says is that
12 my computer has an address to it so when I went to Azov
13 or somewhere else it would show it was on my computer.

14 Q. Did you use wi-fi in an attempt to conceal who you
15 were when you were on the computer?

16 A. Absolutely not.

17 Q. Did you always use the same address when you used
18 your home computer, same e-mail address?

19 A. Same e-mail address, absolutely, yeah, it's
20 gerald.silva@home.

21 MR. MANN: Nothing further. Thank you.

22 THE COURT: Thank you, Mr. Mann.

23 Is there any recross, Mr. Donnelly?

24 MR. DONNELLY: No, your Honor. Thank you.

25 THE COURT: All right. Mr. Silva, your

1 testimony is complete. You may step down. Thank you.

2 Counsel, would you come up for a moment.

3 (Sidebar conference off the record.)

4 THE COURT: Ladies and gentlemen, it's 12:45.
5 What I think we will do after consulting with
6 counsel -- first of all, Mr. Mann, do you have any
7 further witnesses?

8 MR. MANN: No, your Honor. Defense rests.

9 THE COURT: Thank you. So the defense has
10 rested. What we'll do at this point is we'll take our
11 lunch hour. There's a couple things I need to take up
12 with the attorneys that you don't need to be in the box
13 for. Your lunches that you ordered are in the jury
14 room. I'm sorry. I just learned that the alternates
15 didn't get to order lunch so I didn't know that until a
16 few minutes ago, and the reason for that is that often
17 once everything is completed the alternates are
18 discharged and so I think everyone thought that that
19 was going to happen when they took those orders. So
20 you're welcome to steal any other jurors' lunch that
21 you think you can get away with, or to go out and buy
22 something or to share. Whatever you want to do.

23 But I think we'll take 45 minutes. And ladies
24 and gentlemen, you don't have to eat in the jury room
25 across the hall. You can go downstairs. You can just

1 go for a walk. You can do what you want, just like you
2 would on any other lunch hour. It's just we're going
3 to have a short lunch hour, okay?

4 So 45 minutes would put us back here at 1:30.
5 And the reason I'm doing all of this this way is to get
6 you this case this afternoon so you can start
7 deliberating. That's what I'm trying to get to and I
8 think we have a good shot at doing that. All right?

9 So just keep in mind all of my instructions, no
10 discussions about the case, no deliberating until you
11 get it for deliberation this afternoon.

12 Have a good lunch, 45 minutes.

13 (Proceedings out of the presence of the jury as
14 follows:)

15 THE COURT: All right. We do have to do a
16 couple of things on the record before we take our
17 break. I've handed you a draft instruction that would
18 go at the end of the section on "Knowingly" and would
19 be placed at the top of page 12 above the definition of
20 the word "received." That way we wouldn't have to
21 reprint all the instructions, all the pagination would
22 remain the same, and I would just substitute the new
23 page 12 for the old page 12.

24 Do either of you have -- is that satisfactory to
25 you?

1 MR. DONNELLY: Yes, your Honor, thank you.

2 THE COURT: Mr. Mann, do you have an objection
3 to this instruction?

4 MR. MANN: I absolutely do. I think that this
5 instruction conflicts with the instructions that deal
6 with the elements of the offense, both for Counts I
7 through VI and Count VII. And it conflicts because
8 what Counts I through VI require is that the defendant
9 knowingly received a visual depiction, that the
10 depiction involved the use of a minor engaging in
11 sexually explicit conduct, and that he knew the
12 depiction was of that conduct and he knew that at least
13 one other person was a minor.

14 Now what this says is this. This takes away the
15 knowledge requirement, Judge. What it says is that all
16 the Defendant had to know was that he was seeing a
17 visual depiction. Doesn't even say he has to see a
18 visual depiction, but even if it did say that, it
19 doesn't say that he had to see a visual depiction and
20 that he knew it was of sexually explicit conduct.
21 That's what it does, Judge. It takes away that element
22 of the offense.

23 Your instruction says the Defendant did not have
24 to know that the visual depiction was of sexually
25 explicit conduct. And I think that the element

1 explicitly requires that. I think this, in fact, takes
2 that element away.

3 THE COURT: Let's just be clear. What the
4 instruction says is that the Government is not required
5 to prove that the Defendant knew or correctly
6 understood the law of child pornography, but only that
7 he knew factually what he was doing, right?

8 MR. MANN: I think what the statute requires
9 is --

10 THE COURT: So you're saying you think, I want
11 to be clear, your position is that the Defendant's
12 possible ignorance of the law is a defense to the
13 crime. That's essentially what I think you're saying.

14 Put it this way. The Defendant has testified
15 that he believes, he said this over and over, that
16 there's nothing wrong with the Azov site, there's
17 nothing wrong with the Azov films. If the jury
18 determines that that is incorrect as a matter of fact,
19 that is, that these are visual depictions of a
20 lascivious nature, they're sexually explicit, right, if
21 they determine that, then what you're saying is -- and
22 the Government has proven that, you're saying that his
23 misunderstanding of that is a defense.

24 MR. MANN: We haven't debated about whether it
25 would have to be a reasonable misunderstanding or not

1 or anything like that, but there is a mens rea
2 requirement to this statute. And the mens rea
3 requirement is embraced in the requirement of the
4 knowingly requirement, Judge. And he has to have known
5 that he was seeing sexually explicit conduct.

6 THE COURT: Let me just -- if the jury says this
7 is sexually explicit and he says, well, I don't think
8 so, I don't think it's sexually explicit, then he's not
9 guilty because he disagrees with the jury.

10 MR. MANN: The Government can certainly argue
11 that they should disbelieve the Defendant. The
12 Government can certainly argue that all the inferences
13 point to the contrary, that he knew he was importing
14 sexually explicit material. They can argue all of
15 that, but they still have to prove that he knew it was
16 sexually explicit conduct, Judge. And I think that's
17 an absolute defense that he has. Now, they can say
18 that that defense is gibberish; and if you had a case,
19 for example, where the pictures depicted young kids in
20 explicit sexual activity, the first four list of things
21 that are excluded by the statute, I don't think there
22 would be much of a dispute.

23 I don't think a defendant could stand up here
24 and argue I didn't know it was sexually explicit
25 conduct if you had intercourse with a six-year-old.

1 But you have this case and I think the Government has
2 to prove in this case that he knew that there was
3 sexually explicit conduct and this is a borderline
4 case.

5 THE COURT: How does one know that?

6 MR. MANN: Well, the same way one knows any
7 other state of mind of the defendant. Courts always
8 instruct that we don't have an X-ray of the defendant's
9 mind, something like that. You're to determine the
10 defendant's state of mind the same way you determine
11 any other fact by making all the reasonable inferences,
12 considering all the testimony. So they can consider
13 all that and they can look at what the record is and
14 the jury can say, yes, he did know, his denials are
15 just nonsense; or the jury can say, no, the Government
16 didn't prove that. His simple denial isn't enough.
17 It's all the evidence in the record.

18 But what this statute requires, and it's clearly
19 in your instruction on page ten, and it's also, just so
20 the record is absolutely clear, Judge, I think that
21 this whole argument applies not to just Counts I
22 through VI, Judge, but it also applies to Count VII
23 because --

24 THE COURT: I agree with that.

25 MR. MANN: I just want to make clear that the

1 elements are essentially the same for I through VI and
2 VII except that Count VII is possession and Count VI is
3 receipt, I through VI are receipt.

4 And you spell out the elements for Count VII on
5 page 18 and it's the same knowledge requirement with
6 respect to those counts. So I just want to make that
7 technical point.

8 I think that -- and part of the argument here is
9 that if this isn't an element of this offense, then if
10 the Government doesn't have to prove that he knew that
11 he either received or possessed this material and that
12 he knew it involved a visual depiction of sexually
13 explicit conduct, if the Government didn't have to
14 prove that, Judge, it almost becomes a strict liability
15 law and what saves the statute in view of many of the
16 courts that have examined it, I would submit, from a
17 vagueness challenge is the fact that there is a mens
18 rea requirement, mens rea requirement being the
19 knowingly.

20 I think that what the proposed instruction does
21 is take that mens rea requirement out of the statute.
22 I think it conflicts with the requirement of
23 "knowingly" spelled out for all seven counts and at the
24 very minimum so confuses the jury with conflicting
25 instructions that they'll misunderstood what the

1 Government's obligation is.

2 I think I can make a closing argument that says
3 -- I think I'm absolutely entitled to make a closing
4 argument that says not only do you have to prove that
5 it was lascivious, but you have to prove that the
6 Defendant knew it was lascivious.

7 THE COURT: I disagree with that. Maybe I'm
8 wrong about the law, but I don't think you can make
9 that closing argument. I don't think the Government
10 has to prove that he knew to a certainty that a jury
11 would conclude that this was lascivious.

12 MR. MANN: We're verging into the next questions
13 that I'm going to have, which are what can I say in my
14 closing argument. Because if the Court is saying that
15 all the Government has to prove is that in fact he
16 downloaded these pictures, or received these pictures,
17 I'm sorry, that he received or possessed these
18 pictures, I'll just have to address that in my closing
19 argument. It seems to me what the Court is saying
20 is --

21 THE COURT: I guess the difference is maybe more
22 precisely between belief and knowledge. All right?
23 And you're, in my view, conflating and the Defendant in
24 his testimony has conflated belief with knowledge as if
25 belief equals knowledge. Belief doesn't equal

1 knowledge. The Defendant can have a belief that is
2 wrong. He can have a belief that is deliberately
3 ignorant. Those beliefs don't acquit him of the
4 charges. Knowledge is something that is objective and
5 is factual. That's what we've been told by the cases.
6 The jury decides factually what is sexually explicit.

7 Now, what you're saying is and what the
8 Defendant seems to be saying and you want to argue is
9 if he believed these films not to be sexually explicit
10 that the Government has failed to prove the knowledge
11 requirement. And I believe that is an incorrect
12 statement of the law.

13 MR. MANN: I'm not saying that, though.

14 THE COURT: Well, that's what's coming out.

15 MR. MANN: I'm saying something I think is close
16 to that, but not that. It's not what he believes. I'm
17 saying that based on this record that the Government
18 has to prove that he had knowledge that it was
19 lascivious in the facts of this case and that they can
20 try and make that argument from all the evidence in
21 this case. They are clearly making the argument that
22 the PowerPoint was a coverup. They're clearly making
23 an argument that he has a predilection for young boys.
24 That's apparent from the cross-examination, Judge. I
25 can go on with what I anticipate some of their

1 arguments to be.

2 They can argue that his whole statement is
3 unbelievable and that he clearly had knowledge that he
4 was receiving or possessing lascivious material. I
5 think just as equally clearly I should be able to argue
6 that he didn't have knowledge that he was receiving or
7 possessing lascivious material. And the jury is going
8 to have to base that determination on all the facts not
9 just on what he said. I mean, it's commonplace for the
10 prosecution to say, "I don't believe the defendant."

11 But I think if the Court gives this instruction,
12 you're saying that all the Government has to prove is
13 in effect that he had -- that he didn't accidentally
14 receive these packages in the mail, and he didn't
15 accidentally receive these images. I don't think
16 that's what the law says at all. I think this
17 knowledge requirement says it has to be something more
18 than by accident, mistake and other inadvertent
19 reason --

20 THE COURT: Let's be clear. I struck the
21 sentence that was in the instructions in your motion,
22 the one sentence description that was there before,
23 that the Government doesn't have to prove that the
24 Defendant knew what he did was against the law. That's
25 essentially what it said. I tried to make it more

1 moderate. But some instruction needs to be given,
2 given the Defendant's testimony.

3 He stated over, and over, and over again that
4 this website and these are legal. That's what he has
5 said, and he said it about 25 times. That's in my view
6 a statement of his belief but that's not a statement of
7 an objective fact. That's for the jury to decide. And
8 that's all this instruction tries to do is draw a
9 distinction between his belief and the objective fact.

10 MR. MANN: This instruction says the Government
11 is not required to prove that the Defendant knew or
12 correctly understood the law of child pornography, only
13 that he knew factually what he was doing.

14 Well, factually, the question is did he receive
15 a package, did the package have pictures in it or
16 images in it.

17 THE COURT: Well, that sentence could be taken
18 out. It could begin with "If the Defendant incorrectly
19 believed."

20 MR. MANN: If that sentence were taken out, I
21 think I would be free to argue that the Government has
22 to prove that he knew that the images involved the use
23 of a minor engaging in sexually explicit conduct. And
24 it's obviously no secret that I'm going to argue that
25 he didn't know that.

1 THE COURT: Would you be satisfied with this
2 instruction if I took the first sentence out?

3 MR. MANN: Could I have just a moment to think
4 about this, Judge.

5 It's better without that sentence, but I still
6 object to it because it becomes a comment on the
7 Defendant's testimony, and there is no need for a
8 comment on the Defendant's testimony.

9 The Government is free, Judge, to argue to their
10 heart's content that they should disbelieve the
11 Defendant. I suspect that they are going to argue that
12 the jury should disbelieve the Defendant, Judge, but I
13 don't think the Court should be commenting on the
14 Defendant's testimony which the rest of this in effect
15 is. We shouldn't be focusing on what he believes. The
16 question is did he have knowledge. I agree knowledge
17 is different than belief. The Government can argue
18 that he clearly had knowledge, and I know they're going
19 to argue that. I'm going to argue to the contrary, and
20 that's a question of fact for the jury.

21 THE COURT: It's not a comment on the
22 Defendant's testimony. I'm trying to help the jury.
23 That's what jury instructions are supposed to do. The
24 jury may have -- look at all the argument that's going
25 on amongst us. The jury needs to be able to figure

1 this out.

2 Do you want to say anything, Mr. Donnelly?

3 MR. DONNELLY: No, your Honor. I have no
4 objection to the original instruction as proposed by
5 the Court or the one the Court just brought down.

6 THE COURT: All right. Well, I think you've
7 more than placed your objection on the record. I'll
8 think about it over the next half hour. I'm going to
9 make a decision about what to put in there, but
10 something needs to be said that clarifies this issue
11 and I think that this instruction does it in a fairly
12 simple and non-offensive way.

13 MR. MANN: I have another request, Judge. I
14 want a little more time. Not much, maybe another half
15 hour at some point before I start making the closing.

16 I mean, we're going to have about 20 minutes
17 during this lunch break and then you're going to go
18 into instructing the jury.

19 THE COURT: I mean, you've known you're going to
20 close today.

21 MR. MANN: Oh, I knew we were going to close
22 today, but there's a lot to respond to. We just had
23 the Defendant on the stand for the whole morning. I'm
24 going to juggle my closing a little bit, not much, but
25 I'm going to juggle a little bit of what I've outlined.

1 THE COURT: You've got to use your lunch hour to
2 do that. That's the best I can do for you. I'll give
3 you a few more minutes besides the half hour since
4 we've been arguing about this for a while, but that's
5 what you get. I'm not going to delay it an hour.
6 We're going to go into closings right after the
7 instructions, which will start as soon as the evidence
8 is completed.

9 Okay? We'll be in recess.

10 (Lunch recess.)

11 THE COURT: I've had the clerk hand you a new
12 page 12 for the final instructions. So I'd ask that
13 you substitute that page for page 12 that's in there.
14 I've taken the first sentence out of the draft
15 instruction I gave you previously, and I reversed the
16 order of the sentences so that it emphasizes that it's
17 for the jury to decide whether the material meets the
18 definition of sexually explicit conduct and then the
19 sentence that if the Defendant incorrectly believed
20 what does and does not constitute child pornography
21 that does not relieve him of responsibility so long as
22 the Government has proven the elements I outlined
23 above.

24 I've considered your objection, Mr. Mann. I
25 think you said you thought it was commenting on the

1 testimony. I disagree with that. I think it's a very
2 mild instruction given what the instructions previously
3 were, which I took out, and given the Defendant's
4 testimony. And I don't believe it's commenting. I
5 think it's just clarifying. But I note your objection
6 and I don't want to reargue it now.

7 MR. MANN: I understand your ruling. I'm going
8 to have to make it when you make the final
9 instructions. I just want -- can I get a little
10 guidance on what I can say during my closing and not
11 say on the knowledge point?

12 THE COURT: Sure.

13 MR. MANN: What I intend to argue or what I had
14 intended to argue was that the Government had to prove
15 that Mr. Silva received the visual depiction, that he
16 knew it was sexually explicit conduct and that it
17 involved a minor, and then I was going to argue that
18 there were multiple reasons why the Government couldn't
19 prove that he did this knowingly.

20 Now, as I read your instruction, I can still
21 make that kind of argument.

22 THE COURT: I think that's fine. The only thing
23 I think you can't do is argue that you heard Mr. Silva
24 say he didn't believe this was child pornography or
25 sexually explicit; so therefore, he could not have

1 knowingly --

2 MR. MANN: That's not in my argument.

3 THE COURT: So I think that's where the line is,
4 and I don't think you're making that argument.

5 MR. MANN: I don't think I am. I think it's a
6 line. I do argue that it's absurd to think that he
7 would do this given his history and all that, but I
8 think I can still make that kind of argument under your
9 instruction.

10 THE COURT: Sure. I think that's right.

11 MR. MANN: Thank you.

12 THE COURT: Mr. Donnelly, do you have some
13 rebuttal?

14 MR. DONNELLY: We considered over lunch time and
15 I listened to Mr. Mann's objection to it and I
16 sustained his objection. We're ready to move forward
17 without it.

18 THE COURT: I'll leave now.

19 All right. Mr. Mann?

20 MR. MANN: At some point, I just have to renew
21 my motion.

22 THE COURT: I think given what Mr. Donnelly has
23 said, you should renew now.

24 MR. DONNELLY: The Government has no rebuttal.

25 MR. MANN: So the defense renews its motion for

1 a judgment of acquittal under Rule 29, and unless the
2 Court objects, I will incorporate by reference the
3 arguments I made at the close of the Government's case
4 and rely on those arguments. I think the arguments are
5 the same in support of my motion for a judgment of
6 acquittal.

7 THE COURT: Okay. Very well. And I'll deny the
8 motion for the reasons previously stated.

9 I think we're ready to bring the jury in.

10 (Proceedings in the presence of the jury as
11 follows:)

12 THE COURT: Welcome back, ladies and gentlemen.
13 I hope you enjoyed lunch. I hope our alternate jurors
14 found lunch. And I've been discussing matters with
15 counsel. And as you heard before lunch the Defendant
16 rested his case, and the Government has determined that
17 it has no rebuttal testimony so both sides have now
18 rested and it's time for me to give you instructions on
19 the law that will govern your deliberations and then
20 we'll move directly to closing arguments by counsel and
21 you'll have this case for deliberation shortly. All
22 right?

23 So at this time it's my duty to instruct you on
24 the law that is applicable to this case. You must
25 accept the rules of law that I give to you and you must

1 apply them to the facts in this case as you find those
2 facts to be.

3 Now, in applying the law that I'm about to
4 explain to you in these instructions, you must consider
5 the instructions as a whole. You should not choose one
6 part and disregard another. You must accept and apply
7 the law as I give it to you in its entirety.

8 You must accept and apply the rules of law that
9 I give you whether you agree with them or not. It
10 would be a violation of the oath that you took as
11 jurors to base a decision on any version of the law
12 other than that contained in my instructions, just as
13 it would be a violation of that oath to return a
14 decision based on anything other than the evidence in
15 this case.

16 It is not up to you to decide what the law is or
17 what the law should be. Your duty is to apply the law
18 as I explain it to you.

19 Now, I see some of you reaching for your
20 notebooks; and I just want to say you're free to take
21 notes while I give these instructions, but I do want to
22 tell you that I provide a written copy of my
23 instructions to go into the jury room with you. So I
24 don't want you panicking at some point while I'm saying
25 something that's rather complex that you have to write

1 it all down. You'll have a written copy of these
2 instructions to help guide you during your
3 deliberations. But still feel free to take notes on
4 anything you wish to take notes on.

5 So as I told you at the beginning of the trial,
6 the Defendant is presumed to be innocent of the
7 accusations against him. This presumption of innocence
8 remains with the Defendant unless and until the
9 Government presents evidence satisfying you beyond a
10 reasonable doubt that the Defendant is guilty. The
11 presumption of innocence is sufficient to require a not
12 guilty verdict unless you find that such evidence has
13 been presented.

14 If you find that the Government has proven the
15 Defendant guilty beyond a reasonable doubt, the
16 presumption of innocence disappears and is of no
17 further avail to him; however, until that time, the
18 presumption remains with the Defendant.

19 Now, I'm going to shortly explain to you the
20 offenses with which the Defendant is charged and the
21 elements that the Government must prove in order to
22 establish that the Defendant is guilty of those
23 offenses.

24 In order for the Government to prove the
25 Defendant guilty of an offense, it must convince you

1 beyond a reasonable doubt that it has proved each and
2 every element of that offense. Possibilities or even
3 probabilities are not sufficient.

4 If the Government fails to prove any one or more
5 elements of the offense beyond a reasonable doubt, you
6 must find the Defendant not guilty of that particular
7 offense.

8 On the other hand, if you are convinced beyond a
9 reasonable doubt that all elements of the offense with
10 which the Defendant has been charged have been proven,
11 then you should find the Defendant guilty of that
12 offense.

13 Bear in mind that the requirement that the
14 Government prove every element of the offense with
15 which the Defendant is charged does not mean that the
16 Government is required to prove every statement
17 contained in the indictment. What it means is that the
18 Government must prove facts sufficient to prove all of
19 the elements of the offense with which the Defendant is
20 charged as I explain them.

21 Now, as I have said, the burden is upon the
22 Government to prove beyond a reasonable doubt that the
23 Defendant is guilty of the charges made against him.
24 It is a strict and heavy burden, but it does not mean
25 that the Defendant's guilt must be proved beyond all

1 possible doubt. It does require that the evidence
2 exclude any reasonable doubt concerning the Defendant's
3 guilt.

4 Now, a reasonable doubt may arise not only from
5 the evidence produced but also from the lack of
6 evidence. Reasonable doubt exists when, after weighing
7 and considering all of the evidence, using reason and
8 common sense, jurors cannot say that they have a
9 settled conviction of the truth of a charge. Of
10 course, a defendant is never to be convicted on
11 suspicion or conjecture. If, for example, you view the
12 evidence in the case as reasonably permitting either of
13 two conclusions, one that the Defendant is guilty as
14 charged and the other that the Defendant is not guilty,
15 then you will find the Defendant not guilty.

16 It is not sufficient for the Government to
17 establish a probability, even though a strong one, that
18 a fact charged is more likely to be true than not true.
19 That is not enough to meet the burden of proof beyond a
20 reasonable doubt.

21 On the other hand, there are very few things in
22 this world that we know with absolute certainty, and in
23 a criminal case the law does not require proof that
24 overcomes every possible doubt.

25 So in concluding my instruction on the burden of

1 proof then, I'm instructing you that what the
2 Government must do in order to meet its heavy burden is
3 to establish the truth of each part of the offenses
4 charged by proof that convinces you and leaves you with
5 no reasonable doubt and thus satisfies you that you can
6 consistently with your oath as jurors base your verdict
7 upon it.

8 Now, if you so find as to the charges against
9 the Defendant, then you'll return a verdict of guilty
10 on those charges. If on the other hand you think there
11 is reasonable doubt about whether the Defendant is
12 guilty of the offense, then you must give the Defendant
13 the benefit of that doubt and find the Defendant not
14 guilty of that offense.

15 You're going to have in the jury room with you
16 the indictment in order to remember the precise charges
17 against the Defendant. I'm going to remind you once
18 again that the indictment is nothing more than an
19 accusation. It should not be considered as evidence of
20 guilt. It may not even be the basis of an inference of
21 guilt. All that it does is bring this matter before
22 you for a determination, and beyond that it has no
23 significance whatsoever. It merely sets forth the
24 elements of the offenses which the Government must
25 prove beyond a reasonable doubt.

1 Now, you will note that the indictment charges
2 that the offenses in this case were committed in or
3 about a certain date. The proof need not establish
4 with certainty the exact date of the alleged offenses.
5 It is sufficient if the evidence in the case
6 establishes beyond a reasonable doubt that the offenses
7 were committed on a date that is reasonably near the
8 date alleged.

9 The indictment in the case charges the
10 Defendant, Gerald J. Silva, with seven counts.

11 Counts I through VI charge the Defendant with
12 receipt of child pornography, that Defendant knowingly
13 received child pornography. Count VII charges the
14 Defendant with possession of child pornography, that
15 is, that the Defendant knowingly possessed child
16 pornography.

17 As I have told you each of these offenses has
18 essential elements. To find the Defendant guilty of an
19 offense, you must find that the Government has proven
20 each of the essential elements of that offense beyond a
21 reasonable doubt.

22 I'm going to explain the elements of each
23 offense and specific definitions in a little more
24 detail in a moment.

25 Now, keep in mind as you consider the charges

1 against the Defendant that a separate offense is
2 charged in each of the counts of the indictment. Each
3 offense, and the evidence which applies to it, should
4 be considered separately by you and you should return
5 separate verdicts as to each count. And you will have
6 with you a verdict form, and I'll talk about that in a
7 moment, which gives you each count separately.

8 So first let me address the specific elements of
9 Counts I through VI, that is the counts of receipt of
10 child pornography.

11 Counts I through VI of the indictment charge the
12 Defendant with receipt of child pornography. It is a
13 federal crime for anyone to receive child pornography
14 that has been mailed or moved in interstate or foreign
15 commerce. Title 18 of the United States Code, Section
16 2252(a)(2) provides in relevant part: Any person who
17 knowingly receives any visual depiction using any means
18 or facility of interstate or foreign commerce if such
19 visual depiction involves the use of a minor engaging
20 in sexually explicit conduct shall be guilty of an
21 offense.

22 In order for the Defendant to be found guilty of
23 receiving child pornography, the Government must prove
24 each of the following elements beyond a reasonable
25 doubt: First, that the Defendant knowingly received a

1 visual depiction by mail or in interstate commerce or
2 foreign commerce by any means; second, such visual
3 depiction involved the use of a minor engaging in
4 sexually explicit conduct; third, the Defendant knew
5 that such visual depiction was of sexually explicit
6 conduct; fourth, the Defendant knew that at least one
7 of the persons engaged in sexually explicit conduct
8 under such visual depiction was a minor.

9 Now I am going to instruct you as to the
10 specific meaning of some of the words and phrases that
11 I've been using in these instructions. In these
12 instructions, the word "knowingly" means that an act
13 was done voluntarily and intentionally and not because
14 of mistake or accident. You may consider evidence of
15 the Defendant's words, acts or omissions along with all
16 other evidence in deciding whether the Defendant acted
17 knowingly.

18 The offenses of receipt of child pornography
19 charged in Counts I through VI and possession of child
20 pornography charged in Count VII require that the
21 Government prove that the Defendant acted with
22 knowledge. This means that the Government must prove
23 beyond a reasonable doubt that the Defendant was
24 conscious and aware of the nature of his actions, and
25 that the surrounding facts and circumstances as

1 specified in the elements of those offenses as I have
2 outlined them and that he did not act because of
3 ignorance, mistake or accident.

4 In deciding whether the Defendant acted with
5 knowledge, you may consider evidence about what he
6 said, what he did and what he failed to do, how he
7 acted and all the other facts and circumstances shown
8 by the evidence that may prove what was in the
9 Defendant's mind at that time.

10 It is for you, the jury, to decide whether the
11 material received and possessed by the Defendant meets
12 the definition of sexually explicit conduct. If the
13 Defendant incorrectly believed what does and does not
14 constitute child pornography, that does not relieve him
15 of responsibility as long as the Government has proven
16 the elements that I've outlined above.

17 Now, to receive something simply means knowingly
18 to accept or to take possession of something. The term
19 "visual depiction" includes data stored on a disk such
20 as a DVD which is capable of conversion into a visual
21 image.

22 The term "interstate and foreign commerce" is
23 the movement of property between different states or
24 between the United States and a place outside of the
25 United States. The term "minor" means any person under

1 the age of 18 years.

2 Now, the term "sexually explicit conduct" as
3 that term is used in Counts I through VII of the
4 indictment includes any one of the five categories of
5 conduct, whether actual or simulated, including the
6 lascivious exhibition of the genitals of any person.

7 As I told you at the beginning of the case, this
8 case does not involve Categories 1 through 4, which I
9 listed for you at the beginning of the case and I don't
10 need to repeat now. This case involves Category 5, the
11 lascivious exhibition of the genitals of any person.

12 Now, nudity alone is not enough to make an image
13 child pornography. The law requires lascivious
14 exhibition of the genitals. Whether an image of the
15 genitals constitutes a lascivious exhibition requires a
16 consideration of the overall content of the material.

17 In considering the overall content of the image,
18 you may but you are not required to consider the
19 following factors: First, whether the genitals are the
20 focal point of the image; second, whether the setting
21 of the image is sexually suggestive, for example, a
22 location that is generally associated with sexual
23 activity; third, whether the child is depicted in an
24 unnatural pose or inappropriate attire, considering the
25 age of the child; fourth, whether the child is fully or

1 partially clothed or nude; fifth, whether the image
2 suggests sexual coyness or a willingness to engage in
3 sexual activity; sixth, whether the image appears
4 intended or designed to illicit a sexual response in
5 the viewer.

6 An image need not involve all of these factors
7 to constitute lascivious exhibition. It is for you to
8 decide what weight or lack of weight to be given to any
9 of the factors that I just listed. You may conclude
10 that they are not applicable given the facts of this
11 case and this list of factors is not intended to be
12 comprehensive, and you may consider other factors
13 specific to this case from the evidence that was
14 presented at trial and that you find to be relevant.

15 Now, Count VII regards the possession of child
16 pornography. Title 18 of the United States Code,
17 Section 2252(a)(4)(B) makes it a federal crime for any
18 person to knowingly possess any material that contains
19 a visual depiction that has been shipped or transported
20 in interstate or foreign commerce by any means if the
21 production of such visual depiction involved the use of
22 a minor engaging in sexually explicit conduct and the
23 visual depiction is of such conduct.

24 To find the Defendant guilty of Count VII, the
25 Government must prove the following elements beyond a

1 reasonable doubt: First, that the Defendant knowingly
2 possessed any materials that the Defendant knew
3 contained a visual depiction of a minor engaged in
4 sexually explicit conduct; second, the Defendant knew
5 the visual depiction contained in the materials showed
6 a minor engaged in sexually explicit conduct; third,
7 the Defendant knew that production of such visual
8 depiction involved use of a minor engaging in sexually
9 explicit conduct; and fourth, that the visual depiction
10 had been either, A, mailed, shipped or transported in
11 interstate commerce, or B, produced using material that
12 it had been mailed, shipped or transported in
13 interstate or foreign commerce.

14 The Government is not required to prove that
15 each of the previously stated elements has been proved
16 beyond a reasonable doubt as to each and every image or
17 video that was introduced into evidence. The
18 Government is only required to make this showing with
19 respect to one image or video.

20 Now, I've already instructed you on the meaning
21 of a number of different terms in connection with
22 Counts I through VI, and those definitions are also
23 applicable to Count VII. Those terms are "knowingly,"
24 "visual depiction," "interstate and foreign commerce,"
25 "a minor" and "sexually explicit conduct." Those terms

1 have the same meaning as applied to Count VII as they
2 do to Counts I through VI as I just said.

3 I'm now going to instruct you on the meaning of
4 the term "possession." For purposes of this case, "to
5 possess" or "possession" means to exercise authority,
6 dominion or control over something.

7 Now, although you have heard evidence that the
8 Defendant had multiple images or videos of -- just one
9 moment.

10 Counsel, come up.

11 (Sidebar conference.)

12 THE COURT: I think I need to add the words "Of
13 the Government charges is child pornography" because
14 that sounds like I'm stating it is child pornography.

15 MR. DONNELLY: That's fine, Judge.

16 MR. MANN: Thank you.

17 MR. DONNELLY: Thank you.

18 (End of sidebar conference.)

19 THE COURT: Let me begin that last instruction
20 again.

21 Although you have heard evidence that the
22 Defendant had multiple images or videos of what the
23 Government charges is child pornography as I've defined
24 that for you in these instructions, the Government is
25 not required to prove that all of the images in

1 evidence constitute child pornography. Rather, the
2 Government will have proved what is necessary for a
3 finding of guilty if it proves beyond a reasonable
4 doubt that the Defendant acted as charged with respect
5 to any one depiction of child pornography so long as
6 you, the jury, agree unanimously as to which depiction
7 or depictions meet the required elements.

8 Therefore, as long as you find beyond a
9 reasonable doubt that the Defendant knowingly acted
10 with respect to at least one image or video and that
11 the other elements of the offense have been proved
12 beyond a reasonable doubt, you may find the Defendant
13 guilty.

14 So now that you know what it is that the
15 Government must prove and what the standard of proof is
16 to be applied, the next question is how do you
17 determine whether the Government has proved these
18 things beyond a reasonable doubt.

19 Obviously, you must make the determination
20 solely from the evidence that is before you, and from
21 all reasonable and legitimate inferences to be drawn
22 from that evidence. The evidence that's properly
23 before you consists of the testimony of witnesses, the
24 exhibits that I have admitted into evidence and any
25 stipulations, although I believe there have not been

1 any stipulations in this case. So it is the testimony
2 of witnesses and the exhibits that have been admitted
3 into evidence.

4 Now, from the evidence you may draw whatever
5 conclusions are reasonable under the circumstances.
6 The evidence that is before you does not include the
7 following: Comments and statements by attorneys,
8 answers given by witnesses which I ordered stricken and
9 ordered you to disregard, documents or other
10 photographs or other items which may have been referred
11 to but have not been admitted into evidence. Since
12 they are not proper evidence, you should not speculate
13 or guess as to what they may say or show, and you may
14 not consider them except to the extent that and for
15 purposes that they may have been read or shown to you
16 during the course of the trial. And finally, anything
17 you may have seen or heard outside this courtroom about
18 the events in question or the participants in this case
19 are not evidence.

20 Now, you were permitted to take notes during the
21 course of the trial; however, you should remember that
22 not everything you write down is necessarily exactly
23 what was said and that your notes are not evidence.
24 Thus, when you return to the jury room to discuss this
25 case, do not assume simply because something appears in

1 somebody's notes that it necessarily took place in
2 Court. Instead, it is your collective recollection and
3 memory that must control as you deliberate upon a
4 verdict.

5 Now, you have heard evidence that the Defendant
6 made statements in which the Government claims that he
7 admitted certain facts. It is for you to decide,
8 first, whether the Defendant actually made the
9 statement; and second, if so, how much weight to give
10 the statement.

11 In making those decisions, you should consider
12 all of the evidence about the statement including the
13 circumstances under which it may have been made and any
14 facts or circumstances tending to corroborate or
15 contradict the version of events described in the
16 statement.

17 As to the testimony of witnesses, your principal
18 task is to determine the credibility of the witness or
19 witnesses and the weight that you will give to the
20 testimony of each. In making that determination, there
21 are a number of factors that you may consider. One,
22 the opportunity or lack of opportunity for the witness
23 to acquire the knowledge of the facts about which the
24 witness testified. In other words, was the witness in
25 a position to have accurately perceived the facts that

1 the witness related to you.

2 Second, the reliability or unreliability of the
3 witness's memory. In other words, did the witness have
4 a clear recollection of what happened or was the
5 witness's memory cloudy or uncertain or unclear.

6 Third, the witness's appearance on the stand.
7 Did the witness appear to be a person who was telling
8 the complete and unadulterated truth, or did it appear
9 that the witness was slanting things one way or
10 another, consciously or unconsciously.

11 Fourth, the probability or improbability of the
12 witness's testimony. Did what the witness had to say
13 sound reasonable or plausible, or did it appear to be
14 highly unlikely or implausible.

15 And fifth, whether the witness had anything to
16 gain or lose from the outcome of this case. In other
17 words, was the witness totally impartial, or did the
18 witness have some stake in the outcome or some reason
19 to favor one side or the other.

20 Now, in evaluating the testimonial evidence,
21 remember that you are not required to believe something
22 to be a fact simply because a witness has stated it to
23 be a fact and no one has contradicted what the witness
24 said.

25 If in the light of all the evidence you believe

1 the witness is mistaken or testified falsely or that he
2 or she is proposing something that is inherently
3 impossible or unworthy of belief, then you may
4 disregard that witness's testimony even in the absence
5 of any contradictory evidence.

6 You should also bear in mind that it is not the
7 number of witnesses testifying on either side of a
8 particular issue that determines where the weight of
9 the evidence lies, rather it's the quality of the
10 witness's testimony that counts.

11 Thus, just because one witness testifies on one
12 side of an issue and another witness testifies on
13 another side does not necessarily mean that you must
14 consider the evidence to be evenly balanced. If you
15 feel that one of the witnesses was more credible than
16 another for whatever reason, you may find that the
17 weight of the evidence lies on the side of the first
18 witness.

19 Similarly, just because there may be more
20 witnesses testifying on one side of an issue than on
21 another does not mean the weight of evidence lies in
22 the favor of the greater number of witness. Once
23 again, it is the credibility or the quality of the
24 testimony that determines where the weight of the
25 evidence lies.

1 Now, the fact that a witness may have been
2 employed by a law enforcement agency does not by itself
3 mean that you should give that witness's testimony any
4 greater or any lesser weight simply because of that
5 fact. You should assess the credibility and testimony
6 of such witnesses by applying the same factors as you
7 would with respect to any other witness.

8 Also, the mere fact that this case is brought in
9 the name of the United States of America does not
10 entitle the prosecution in the case to any greater
11 consideration than that accorded to the Defendant. By
12 the same token, it does not mean that the prosecution
13 is entitled to any less consideration. All parties,
14 whether Government or individuals, stand as equals
15 before the Bar of justice.

16 Now, in addition to assessing credibility, the
17 credibility of witnesses and the weight to be given to
18 their testimony, you should also evaluate the exhibits,
19 which you will have with you in the jury room. You can
20 examine them and consider them carefully; however, bear
21 in mind that merely because an exhibit has been
22 admitted into evidence does not mean that you're
23 required to accept it at face value. Like the
24 testimony of a witness, the significance of an exhibit
25 or the weight you attach to it will depends on the

1 evaluation of that exhibit in light of all the facts
2 and the circumstances of the case.

3 Now, certain videos that may have been of a
4 disturbing nature have been admitted into evidence.
5 You may feel that these are not pleasant images to look
6 at. You should not let these images affect your
7 emotions to the prejudice of the Defendant. Your
8 verdict must be based on a rational and fair
9 consideration of all the evidence and not on passion or
10 prejudice against the Defendant, the Government, or
11 anyone else that is connected with this case.

12 Now, as I mentioned to you earlier, you may
13 consider only the evidence that's properly before you;
14 however, that does not mean that in determining the
15 facts you are limited to the statements of the
16 witnesses or the contents of the exhibits. In reaching
17 your conclusions, you are permitted to draw from the
18 facts that you find have been proved such reasonable
19 inferences that seem justified in light of your
20 experience, inferences or deductions or conclusions
21 that reason and common sense lead you to draw from the
22 facts that have been established by the evidence in the
23 case. Such evidence, as you recall, is sometimes
24 called circumstantial evidence. To put it another way,
25 the facts that may be proved either by direct -- a fact

1 may be proved by either direct evidence or
2 circumstantial evidence. Direct evidence you'll recall
3 includes such things as the testimony of an eyewitness
4 who personally observed the fact in question or a
5 photograph or a document of the actual thing that is
6 described. Circumstantial evidence consists of a proof
7 of a series of facts or circumstances from which the
8 existence or non-existence of another fact may be
9 reasonably inferred. Now, the law makes no distinction
10 between the weight to be given to direct and
11 circumstantial evidence; however, it does require that
12 any fact required to convict the Defendant be proved
13 beyond a reasonable doubt.

14 Now, although the Government is required to
15 prove the Defendant guilty beyond a reasonable doubt,
16 the Government is not required to present all possible
17 evidence related to the case or to produce all possible
18 witnesses who might have some knowledge about the facts
19 of the case. As I said to you many times, it is up to
20 you to determine what the facts of the case are. You
21 should not interpret anything that I have said or done
22 during the course of this trial as expressing an
23 opinion on my part as to what the facts of the case
24 are. I have not intended to express any such opinion
25 to you, and you should not be concerned about what my

1 opinions are regarding the facts of the case. That is
2 a matter for you alone to decide.

3 Now, neither bias in favor of any person or any
4 cause or prejudice against any person or cause nor
5 sympathy of any kind should be permitted to influence
6 you during the course of your deliberations. All that
7 any party here is expected or entitled to expect from
8 you is a verdict that is based on your fair, scrupulous
9 and conscientious examination of the evidence that is
10 before you and your application of the law as I have
11 explained it to you.

12 Now, in order to return a verdict in this case,
13 all 12 of you must agree as to what that verdict will
14 be. You cannot return a verdict of either guilty or
15 not guilty against the Defendant unless your decision
16 is unanimous. Therefore, there are two things that you
17 should keep in mind during the course of your
18 deliberations. On one hand, you should listen
19 carefully as to what your fellow jurors have to say,
20 and you should be open-minded enough to change your
21 opinion if you become convinced that you were
22 incorrect.

23 On the other hand, you must recognize that each
24 of you has an individual responsibility to vote for the
25 verdict that you believe is the correct one based on

1 the evidence that has been presented and the law as I
2 have explained it. Accordingly, you should have the
3 courage to stick to your opinion even though some or
4 all of the other jurors may disagree with you, as long
5 as you have listened to their views with an open mind.

6 Now, when you begin your deliberations, you
7 should elect one member of the body to serve as your
8 foreperson. The foreperson will preside over your
9 deliberations and will speak for you here in court.
10 You will then discuss the case with your fellow jurors
11 and reach an agreement if you can do so. Your verdict
12 must be unanimous. Each of you must decide the case
13 for yourself, but you should do so only after you've
14 considered all the evidence, discussed it fully with
15 the other jurors and listened to the views of your
16 fellow jurors. Do not be afraid to change your opinion
17 during the course of the deliberations if the
18 discussion persuades you that you should, and do not
19 come to any decision just because the other jurors
20 think it is right.

21 Now, if it becomes necessary for you to
22 communicate during your deliberations with me, you may
23 send a note through the marshal, signed by the
24 foreperson. No member of the jury should ever attempt
25 to contact me except by a signed writing, and I will

1 communicate with any member of the jury on anything
2 concerning this case only in writing or here in open
3 court.

4 Now, if any reference that I have made or that
5 counsel has made or makes in their arguments to any
6 matters of evidence, if it does not coincide with your
7 own recollection, it is your recollection which should
8 control during your deliberations.

9 Now, occasionally jurors want to rehear
10 testimony. I want you to understand that in a
11 relatively short trial like this that generally your
12 collective recollection should be sufficient for you to
13 be able to deliberate effectively. However, if you
14 feel you need to rehear testimony, I'll consider your
15 request. Just keep in mind that this is a
16 time-consuming and somewhat difficult process. So if
17 you think you need this, consider your request
18 carefully and be as specific as possible.

19 As I mentioned earlier, I prepared a verdict
20 form for you, and you'll have that verdict form with
21 you in the jury room. So after you've reached a
22 unanimous verdict, your foreperson will fill that form
23 out, sign it and date it, and then advise the Court
24 through the marshal that you are ready to return to the
25 courtroom.

1 And finally, as I told you, I have prepared a
2 copy of these instructions, which I'll be giving to
3 you, to assist in your deliberation.

4 So that ladies and gentlemen, completes my
5 instructions to you on the law. Mr. Donnelly will now
6 give you closing argument on behalf of the Government
7 followed by Mr. Mann's closing argument and then
8 Mr. Donnelly has the last word with rebuttal argument,
9 if he wishes, because the burden of proof, as you know,
10 rests with the Government.

11 So Mr. Donnelly, are you ready?

12 MR. DONNELLY: Yes, I am, your Honor.

13 Thank you very much.

14 MR. MANN: Your Honor, are you going to hear us
15 later on issues?

16 THE COURT: Yes.

17 MR. MANN: Thank you.

18 MR. DONNELLY: May it please the Court,
19 Mr. Mann, ladies and gentlemen of the jury, good
20 afternoon.

21 We're not here today because the Defendant
22 possessed and received pictures of boys skinny-dipping
23 on a beach. We're not here today because of mere
24 nudity. We're definitely not here because the
25 Defendant is a nudist. We're here today because, as

1 Judge Smith just explained to you, it's against the law
2 to receive and to possess child pornography. And as
3 Judge Smith just explained, we're here because it
4 violates those laws just the same way as if you had
5 pictures of sexual intercourse and other forms of
6 sexual activity. It's against the law to receive and
7 possess images that depict the lascivious exhibition of
8 the genitals.

9 So we're here today because from October of
10 2010, until April of 2011, on more than 20 occasions,
11 how ever you count it, this Defendant accessed the
12 Internet on countless occasions, and on those 20-plus
13 occasions went to the Azov Films website and made up
14 his mind knowing exactly what he was doing to purchase
15 these images of these naked boys, these lascivious
16 pictures of these young boys.

17 We know that once he got them, he watched them.
18 And after watching them, they remained in his
19 possession up until the day he ran into Inspector
20 Michael Connelly. That's the date of the execution of
21 the search warrant, September 27, 2012.

22 So that led to the indictment you have before
23 you in this case. So first, I'd like to thank you. At
24 the beginning during my opening statement I asked you
25 all if you could just pay close attention to the

1 evidence. It hasn't been easy for you at times. We
2 recognize that. But you did pay close attention. It's
3 going to help you immeasurably in your deliberations.
4 This isn't a complex case, and I don't think I need to
5 use a lot of your time this afternoon, but if you'll
6 bear with me I'd like to take just a few moments to
7 give you the Government's understanding of the evidence
8 in this case.

9 Use your common sense. You don't have to leave
10 it at the courthouse door. The Judge told you about
11 the burden of proof in this case. In a free country it
12 should be on the Government. It is. We gladly accept
13 it. But remember what he said, also, that we're a
14 country and a Government of humans and, therefore, we
15 can't know anything beyond all doubt. And so the
16 burden of proof, yes, is on the Government to prove the
17 elements of the offenses beyond a reasonable doubt but
18 not beyond all doubt.

19 As the Judge instructed you, consider each
20 count. You will have for your assistance -- I think we
21 have it hidden back here, but you'll get Government's
22 Exhibit 32, the big summary chart, you'll have that to
23 help you. The Judge is going to give you a verdict
24 form where the videos that are charged for each count
25 are specified for you.

1 You will also see in the indictment that dates
2 are charged, and it will say in or about or on or
3 about. You're going to see a table in the indictment
4 for Counts I through VI that tell you what video was
5 charged in this case as well as the approximate date
6 received. The reason in the law is that dates don't
7 have to be exact. You can understand in this case we
8 know when the orders were placed with Azov Films. We
9 know they were put into the United States after being
10 shipped from Canada in international commerce. They
11 were placed into the United States mails but the exact
12 date when the Defendant received any of these is
13 something that we can't know today.

14 The Judge told you that the Government must
15 prove that the Defendant committed these offenses
16 knowingly. Part of the consideration of that element,
17 the knowledge element, is that the Defendant did not
18 act by accident or mistake.

19 The Defendant here, folks, as you know, is not
20 being charged with the possession of one video he
21 happened to order. He's not being charged with any of
22 the unopened videos. You heard some testimony from
23 Inspector Connelly and even the Defendant today that
24 around 13 of the videos he ordered were not opened.
25 None of those are before you as specific videos under

1 the charges.

2 But you have to ask yourself now that you know
3 what's in these videos that once you get that first
4 one, don't you stop? Once you get the second one,
5 don't you say, "Oh, they're all the same"? But no, he
6 went on a third, a fourth, a fifth, a sixth time.
7 Knowledge. Knowingly.

8 Look through Exhibit 28. That's the catalog
9 with the descriptions of each film. You know, they
10 don't come right out and say about some of the lewd
11 scenes we all saw in this case. They hint at it. They
12 tell you how sweet the boys are. And you ask yourself,
13 as I asked you to ask during the opening statement,
14 lascivious or lawful?

15 You'll remember there was testimony today when
16 you are considering whether there was knowledge in this
17 case, this is the invoice from December 2nd of 2010,
18 remember "Vladik Remembered, Volume 1"? I think we
19 looked at some clips from that particular exhibit. If
20 you buy that on December 2nd, you remember some of the
21 scenes that were in there, why do you go ahead and buy,
22 this is the long list of New Year's Day purchases the
23 Defendant made that also included "Vladik Remembered,
24 Volume 2." If you don't know that these videos contain
25 child pornography, why do you go back to the well

1 again, and again, and again. It's because he knew, he
2 liked it for whatever reason, and wanted it. That's
3 why we're here today.

4 One of the elements in this case will be that
5 the materials were put in the U.S. mails. So that's
6 why it seemed meaningless at the time but we put in the
7 envelopes for you. We have to prove beyond a
8 reasonable doubt that these items either came to the
9 Defendant in interstate or foreign commerce, which I
10 think we did as well; that they went from Canada, you
11 recall, to upstate New York outside of Buffalo and then
12 were put in the U.S. mails to the Defendant's house.

13 Now, the Judge instructed you on the idea of
14 sexually explicit conduct. He explained to you the
15 word, how you use -- some factors you can use to
16 consider the word "lascivious." It's a common sense
17 word, I'd suggest to you. Not a common word. Not one
18 that we all use in everyday speech perhaps, but just
19 what you think it means is what it means, is are these
20 pictures for lewd and lustful purposes. I ask you,
21 what other purposes is there for all these things that
22 he possessed?

23 As you consider that, though, it's not the
24 intent of the subjects that you should be considering
25 but the intent of those who designed these images. You

1 might see the boys having fun, smiling. They might not
2 know what's going on around them. They might not know
3 why these things were being produced. But what about
4 the people who designed these images? That's one of
5 the factors the Judge gave you. Are these images
6 designed for a lascivious purpose?

7 I told you at the beginning of this case that
8 you would -- through the Defendant's actions, you would
9 get a glimpse into the international market in child
10 pornography, how the Azov Films website was serving
11 tens of thousands of customers throughout the world.
12 And we were privileged in this case to hear from some
13 highly-skilled law enforcement professionals from both
14 sides of the border. You'll recall Toronto Police
15 Service Detective Paul Krawczyk, who told you that
16 after doing some preliminary investigation he obtained
17 a search warrant for the Azov Films business premises,
18 going there on September 1st of 2011. You should have
19 a picture of the Azov Films building up on your screens
20 right now. You recall that they went around back and
21 executed the search warrant through that garage door.

22 What did they find there? They found an entire
23 production studio for these videos. You heard
24 testimony how they received raw footage from the
25 Eastern European countries where these boys were being

1 filmed and how a production studio was set up inside.
2 Remember there was some testimony about even
3 sound-proofing material was put on the walls, and how
4 after that raw footage was converted into digital
5 films, those digital films were served on the large
6 servers at Azov Films.

7 You also heard that once those digital copies of
8 the films were on the large servers, large computers,
9 how they had sort of industry grade DVD burners on
10 scene where they could pump out DVD after DVD, which
11 was then put in some slick packaging with artwork on
12 the boxes and textural material describing what's on
13 the boxes and, of course, you get a good overview of
14 the scope of the operation if the testimony did not
15 establish that for you. And you'll remember, lastly,
16 that the bright, young computer investigator from the
17 Toronto Police Service, Matthew Ross, how he testified
18 about how he and his computer team were in charge of
19 trying to figure out to map out where the computers
20 were. I hope you were impressed with how careful they
21 were with the evidence and how you can be assured that
22 when they made that exact bit-for-bit digital image of
23 the Azov Films server and they passed that on to
24 American investigators that you can rely on the
25 evidence you have in this case. Certainly the

1 Defendant is not disputing it.

2 But you'll recall from Matthew Ross's testimony
3 how he'd said "I unplugged the Azov Films server from
4 the wall, from the Internet on May 1st of 2011, at
5 approximately 9:00 p.m."

6 And you heard from Mr. Ross, as well as from
7 Mr. Psyllos, the American postal computer analyst,
8 state that when once a website is disconnected from the
9 Internet and you try to go to it you can try and type
10 it in, they'll be a record of you trying to do that, as
11 Mr. Psyllos found on the Defendant's computer, you'll
12 find a record of it but once you tried to go on the
13 website that you're just going to get an error message.
14 Who cares about that? Well, we care about it because
15 seeing those error messages, and even the Defendant
16 referred to it today, you know something's wrong.
17 Might be something innocent. We've all probably tried
18 to go to websites and we get these error messages that
19 something is down. But that something's wrong, I
20 submit to you, ladies and gentlemen, you can consider
21 whether it went into the Defendant's mind and whether
22 he started thinking, wait a minute, I go to this site
23 all the time and I went a few days ago. It's down. I
24 went again. It's down. What's happening here? What
25 should I do about it? I've made all these purchases.

1 Well, I'd submit to you that fear sets in and
2 might have set in on the Defendant. The reason why I
3 submit that to you is that we know that -- we know it
4 from the e-mail to Ken Bell the Defendant sent where he
5 says, Oh, the website is down. It's gone. We know
6 that at the latest he knew about this on June 3rd. But
7 even in the Defendant's testimony he couldn't pinpoint
8 a date, but he seemed to say it was some time earlier
9 than that. And I'd submit to you, ladies and
10 gentlemen, that he knew the website was down. He knew
11 there was a problem. He surmised that law enforcement
12 might have caused the taking down of this website. I
13 submit to you that's the state of the evidence and that
14 explains his weird e-mails to Ken Bell where he talks
15 about what an awful website Azov Films is and how
16 they're -- they depict themselves as naturists, a
17 naturist website, but whoa, all the videos they're
18 selling are naked boys. Like that's an awful thing.

19 He tried to explain it away today, his language
20 in those e-mails. He tried to explain it away today by
21 saying that, Well, what I meant from this is bah, bah,
22 bah, bah, bah, bah, bah. Does that explanation make
23 sense to you? He was trying to get one over on Ken
24 Bell, to tell him and so there would be a record of him
25 telling Ken Bell that this is a bad website that

1 exploits young boys and that is grooming them for
2 future adult pornographic films.

3 He might have been right about that, but he was
4 not truthful with you, I would submit, when he tried to
5 testify today that that was not the message he was
6 sending to Ken Bell. The e-mail speaks for itself.
7 Look what he has to say.

8 Now, after the shutdown of the Azov Films
9 website, as I mentioned, Toronto Police Service passed
10 on the evidence relating to particularly the American
11 customers to Inspector Brian Bone. You heard from
12 Inspector Bone who told you that he then had to cull
13 through the evidence. There were ten thousand plus
14 American customers of Azov Films, and he found the
15 invoices that you have as evidence in this case of the
16 Defendant's purchases and he passed them on to
17 Inspector Connelly. Inspector Connelly told you, that
18 intern, he got the evidence, did some further
19 investigation and obtained a search warrant for the
20 Defendant's home at 34 Morris Street in Coventry.

21 We know the Defendant lives there alone and,
22 well, I guess these pictures speak for themselves as
23 far as the organization of the belongings in the house.
24 But we know that most of the evidence in this case came
25 from the Defendant's video room. I'd submit to you you

1 look at the easy chair there with the TV, this
2 Defendant -- you had to suffer through these movies at
3 quadruple and double and quadruple speed when Mr. Mann
4 played them all for you. I'd submit to you he tried to
5 say he was watching them at fast speed. Use your
6 common sense. He was sitting in that chair enjoying
7 these films and not at quadruple speed.

8 Azov Films were found during the execution of
9 the search warrant throughout the Defendant's house.
10 We know he had a DVD player, a TV to watch them on.
11 And Inspector Connelly told you about finding the room
12 in this condition and searching through the stuff in
13 there to find the Azov Films that were scattered
14 throughout the room. Hardly, by the way, the organized
15 research project that the Defendant tried to sell you.

16 The computer the Defendant used to buy these
17 videos was found in the house and -- found in this
18 room, excuse me, the Toshiba laptop that you heard
19 about from Mr. Psyllos.

20 You know, a word on that. The Defendant told
21 you today about how he doesn't know much about
22 computers and he's not really good with them. You
23 know, you'll have to decide what value this topic and
24 his testimony has for you, but ask yourself this. Is
25 this a guy who doesn't know how to use a computer?

1 He's accessing somebody else's wi-fi, one of his
2 neighbors, perhaps. He goes down to Starbucks, he goes
3 to Panera Bread or Tim Hortons, or whatever it is, and
4 accesses the Internet that way. Why? Because he's
5 ignorant? No. Because he knows he can get it off
6 somebody else for free, and he doesn't want to pay for
7 it. I'd submit to you he also knows that that would
8 stop the trail, an investigative trail back to his
9 computer.

10 We already talked about the mailings. Several
11 of those were found in the house.

12 A word on the child pornography. The Court
13 instructed you about this word "lascivious." And
14 sorry, folks, but I have to just quickly show you a
15 couple of the images that we had in the evidence in
16 this case. But the Judge gave you six factors to
17 consider in this case in determining whether that word
18 "lascivious" has been proven, whether these images are
19 or if they're merely nude pictures. Obviously, this
20 isn't the baby in the bathtub type picture.

21 First factor, are the genitals the focal point?
22 Now, maybe on one or two occasions you might have seen
23 scenes where the cameraman focused in on the crotch
24 area of one of these young boys. There wasn't a lot of
25 zooming in. But what you do see, these images I would

1 submit to you, were just obsessed with these boys'
2 genitals, to make sure that they were always visible
3 and that the boys did things to make them more visible
4 to the leering men who watched these videos.

5 You remember in the first video we showed you,
6 it's called "FKK Waterlogged." Remember the boys
7 sitting, doing sit-ups on the bed, their genitals right
8 across the middle of the picture. Prior to that, one
9 of the boys still had his underwear on. There was an
10 unmistakable erection in the picture. These images
11 were just obsessed with the genitals of the boys.
12 Maybe a more helpful factor, the settings. Where did
13 these pictures take place? Were they at the volleyball
14 court at the nudist resort with moms and dads around?
15 Of course not. They were always inside; or if outdoors
16 at private places outside, a beach perhaps, where
17 nobody else is around. There's no adults, there's no
18 moms, there's no dads, there's no family setting. The
19 settings are beds, are mattresses.

20 In one of the last things you saw, you saw the
21 boy at high speed, Mr. Mann played it, a boy in the
22 blow-up pool putting oil all over his body and spinning
23 around. Why? For somebody else's pleasure.

24 You saw, as far as other settings, saunas,
25 showers, pools settings. Consider it.

1 Unnatural poses. You remember the child in the
2 chair, the naked boys in this Lotus position when you
3 ask yourself about the positions these kids were put
4 in. That was from "Vladik Remembered, Volume 1." It's
5 Exhibit 2. We showed you the clip. You saw it again
6 when Mr. Mann played it. The boy sitting in the chair
7 and then he gets upside down, does like a headstand and
8 then he puts his feet together. And the camera then
9 really did zoom in on his genitals and anal area.
10 Lawful or lascivious?

11 Remember the wrestling scenes you saw in several
12 of the videos. Why is it that the boys' legs always
13 seemed to get wrapped around the other kid's head,
14 crotches near faces. And I'm sorry I have to argue
15 this way, folks.

16 You know, on two occasions you heard evidence
17 that along with the videos the Defendant bought DVD
18 photo bonus disks. I asked him today why did you buy
19 those. "Oh, they were on sale." Come on. I'd submit
20 to you a good place to start in your deliberations
21 might be those exhibits because go to them and ask
22 yourself is this just mere nudism? Just to run through
23 a few of them, folks, I apologize, but I think it's
24 necessary. Lawful or lascivious?

25 Why do you need those still images? Why do you

1 even order them?

2 One of the other factors, are the children fully
3 clothed or nude and is it a natural thing considering
4 the age of the child. Is this the way that 12, 13,
5 14-year-olds behave? Mr. Silva would have you believe
6 that in his PowerPoint, the natural state of the child.
7 Do you believe that? Really? Is it a natural state
8 for two or three boys to hop in a shower? Obviously,
9 it's natural for a naked person to hop in a shower but
10 then two or three 12- or 13-year-old boys, is that what
11 they do naturally? And then do they take down a bottle
12 of shampoo, put some in their hands, or soap, and rub
13 it all over the boy in the shower with them? Natural
14 pose? I don't think so.

15 You'll remember the scene, one of the first
16 scenes we showed you from Exhibit 1, "FKK Waterlogged,"
17 where the older boy takes oil and puts it on the back
18 of the younger boy and rubs him up and down his back
19 right down to the top of his buttocks. Lawful or
20 lascivious? There's just no explanation for it, no
21 lawful explanation for it.

22 Designed, sadly, for men who like this kind of
23 thing. That might be something that's new to you in
24 this case, but I'd submit to you the evidence shows
25 that, sadly, it's a real thing. There are people like

1 the Defendant out there who like this stuff, who want
2 it and will spend a lot of money on it. This isn't
3 nudism. We all sat through the indoctrination on
4 naturism and nudism. That was on the slides. But as
5 I've said, there's no families here. It's just kids
6 being, in the words of the Defendant, exploited,
7 groomed.

8 Now, the Defendant testified. It's going to be
9 up to you decide what to do with his testimony. You
10 can consider it against the prior statements and
11 behavior he's engaged in. I would submit to you that
12 his testimony like his statements to Inspector
13 Connelly, like his e-mails to Ken Bell, the PowerPoint
14 he came up with, it's all designed to cover his tracks,
15 all designed to be a smoke cloud to come up with some
16 explanation as to why he took his money and spent it on
17 these things time and again.

18 And as you consider his testimony, consider who
19 he is. This isn't an uneducated person. He's smart.
20 He's educated in the system. He works with
21 prosecutors, police officers like Ken Bell all the
22 time. He works with child protection people. So this
23 is a person who knows the system.

24 We know that for most of his career right from
25 getting out of high school he's wanted to be around

1 young boys.

2 And so as you consider his testimony, consider
3 his demeanor, how he appeared on the witness stand as
4 the Judge's instruction suggested. And ask yourself
5 did it make sense to you. Did it make sense, his claim
6 that these are all legal and these are just boys being
7 boys.

8 And you have to ask yourself, maybe a good
9 starting point, is his credibility about his
10 presentation. We know that his PowerPoint wasn't
11 created until after he knew, and we know he knew on
12 June 3rd from that e-mail to Ken Bell and we know that
13 the earliest date he started working on this, the
14 PowerPoint to end all PowerPoints, the presentation to
15 end all presentations, the big one, even though he had
16 never done a presentation before, he didn't start
17 working on it until July 9th of 2011.

18 He was worried, folks. And you'll have all
19 those slides to go through. Go through them. Ask
20 yourself if they make sense. Ask yourself if those are
21 the work of a person who has had all these years of
22 experience working with sexual offenders. You'll find
23 some statements that are perfectly truthful and common
24 sense from this area. There's nothing scholarly about
25 it. And half of them are just weird, like the natural

1 state of the child is nude.

2 You notice that he couldn't tell us at all how
3 the dozens of Azov films that he purchased, opened and
4 watched, how any of them advanced the ball on the
5 preparation of his presentation. So consider that when
6 you evaluate the Defendant's credibility.

7 He tells you that -- excuse me. One other
8 factor Judge Smith said you could consider is the
9 Defendant's interests or any witness's interests,
10 whether it's Inspector Connelly, the Defendant or
11 anybody, you consider whether they have something to
12 lose or gain in this case. You consider that as you
13 evaluate the Defendant's testimony as well. But ask
14 yourself if he's doing research, and Inspector Connelly
15 testified -- my recollection is that Inspector Connelly
16 testified that the Defendant told him that he was
17 preparing -- he got the wrong idea, Inspector Connelly,
18 "I'm preparing a presentation for work." If that was
19 true, why is he spending \$1,589 of his own personal
20 money, why is he using his own private g-mail address
21 instead of going through the normal processes of his
22 employer.

23 Well, got to come up with an explanation for
24 that, and he gave you his explanation this morning
25 during his testimony. Well, folks, I'd submit to you

1 that the Defendant wasn't doing research. He was just
2 pursuing his own sexual gratification. Why didn't he
3 tell Ken Bell? He tells Ken Bell all these things
4 about how awful this website is. They're putting on
5 airs of legitimacy. They're grooming young men to
6 enter into the world of adult porn. He tells Ken Bell
7 all this stuff and never tells his good friend that he
8 purchased dozens of these videos? Never tells him that
9 he spent 1500 bucks on this website? See, he didn't
10 tell Ken Bell the truth, and I'd submit to you he
11 didn't tell you the truth today. He's covering his
12 tracks.

13 So as you consider this case, I'd submit to you
14 he's covering his tracks and it shows something to you.
15 It's called a consciousness of guilt.

16 This case isn't complicated, folks. The
17 Defendant was collecting child pornography, the kind he
18 obviously liked. When he got caught, came up -- when
19 Azov got caught and when he got caught, he came up with
20 false explanations. This shows that consciousness of
21 guilt. And I'd submit to you that that's the one thing
22 you should agree with him about, his guilt.

23 So I thank you for your attention, and I'd ask
24 you to find this Defendant guilty of all the counts of
25 the indictment. Thank you.

1 THE COURT: Thank you, Mr. Donnelly.

2 Mr. Mann.

3 MR. MANN: Your Honor, ladies and gentlemen,
4 Mr. Donnelly and Mr. Silva, Mr. Connelly, this is my
5 opportunity to make a presentation to you on behalf of
6 Mr. Silva. Like Mr. Donnelly, I want to thank you for
7 sitting through this trial. All of us who do trials
8 are appreciative of what jurors go through and we're
9 grateful to you for participating in the system.

10 In a moment, I'll get into the evidence and all
11 that, but make no mistake about it, there's an
12 overarching issue in this case. Are these images
13 lascivious or not? I think you were told at the
14 beginning of the trial by the Court that that was going
15 to be the issue. It is the issue. There are some side
16 issues that I'll get into. Mr. Donnelly got into them,
17 but the issue is are these images lascivious. And I
18 guess I part company with the Government right at the
19 beginning. Not only am I going to argue that they're
20 not lascivious, but I'm going to ask you to look at
21 these images not necessarily from your own perspective
22 but from the perspective of someone who is a nudist
23 because that is one of the issues in this case.

24 Many of you may have found these images
25 unacceptable, distasteful, inappropriate. Many of you

1 may have even found them repulsive, but that's not the
2 question before you. The question before you is: Are
3 they lascivious? Mr. Silva is a nudist. He told you
4 he was. There's no real dispute he's a nudist.
5 Mr. Donnelly doesn't say he made that up. That wasn't
6 an excuse that he made up to cover his tracks. He
7 clearly was a nudist. And I would suggest to you that
8 these films are nudist films. They may be at some
9 level in-your-face nudist films. Most of us when we
10 have something thrown in our face don't like it. Even
11 if we agree with it, we don't like it. If we disagree
12 with it, we like it even less I would suggest to you.

13 You have to get over all that, I would argue to
14 you, and ultimately look at these films and say to
15 yourself at some level are they lascivious. And we'll
16 go through the guidance the Court gave you as to what
17 constitutes lascivious and what it isn't but more what
18 it is. And also the fact that the Court said you can
19 consider other factors, and I'm going to suggest to you
20 some other factors. And also that you need to consider
21 these materials in context.

22 Before I get there, though, I want to touch
23 base, first, with a fundamental point that animates
24 this case. It's a criminal case, and it's different
25 than other types of decision-making that most of you

1 have probably gone through in your life. Most of the
2 situations where you had to make a decision, you get a
3 body of information and you decide what's more likely
4 than not. Your kid comes home late. You ask your kid,
5 "Where have you been?" The kid gives you an excuse or
6 an explanation. You decide is it likely true or
7 likely not true. And that's the way we make decisions
8 day in and day out in life.

9 This is a criminal case where you make a
10 decision in a different way. You make a decision based
11 on whether the Government has proven its case beyond a
12 reasonable doubt. I hope that at the end of this case
13 you will be persuaded -- I hope that you'll be
14 persuaded that these films were not lascivious, that
15 they were not lascivious, that they were nudist films.
16 And I hope that when we go through the factors you'll
17 come to that conclusion, but it is not Mr. Silva's
18 burden to convince you that these films are not
19 lascivious. It's the Government's burden to prove to
20 you beyond a reasonable doubt that they are lascivious.
21 It's not his burden to prove to you that they're not.
22 It's the Government's burden to prove that they are.

23 So if you're in a position of equipoise, so to
24 speak, and if -- if there's a robust debate about
25 whether they're lascivious or not lascivious, then I

1 would submit to you the Government has failed in its
2 burden of proof. I'm hopeful that when we get done
3 with this you'll be persuaded that these are nudist
4 films, not lascivious films, but I want to emphasize
5 that it's not Mr. Silva's burden.

6 What I now want to do is go through some of the
7 witnesses in the case to see what they contribute to
8 the assessment of this case, but let's be frank, we can
9 go through all the witnesses but at the end of the day
10 the first step in this analysis is going to be the
11 DVDs. You're going to have to think about what's on
12 those DVDs, what's on those tapes.

13 The first witness the Government presented was
14 Sergeant Krawczyk. He told you that there was an
15 arrest in Toronto. He told us that Azov had lots and
16 lots of customers but, miraculously, he didn't know;
17 and Mr. Ross, the computer constable from Toronto
18 didn't know; and Mr. Bone, the U.S. expert didn't know
19 how many visitors there were to the website at all. We
20 know there were lots. We know there were lots because
21 we know there were over 10,000 customers.

22 I think Mr. Krawczyk told us also that they had
23 been selling in 90 countries. He said that they'd been
24 in existence for five or six years and they operated as
25 any other website, like an Amazon.

1 Well, then at some point either with him or
2 Mr. Ross there was the discussion about, well, they're
3 not quite like every other website because they block
4 certain people from gaining access like law enforcement
5 agencies. But the person who said that also
6 acknowledged that there's no way a normal visitor to
7 the website would ever know that.

8 This was, from all appearances, an above-board
9 legitimate website that operated, as Sergeant Krawczyk
10 said, like Amazon. It wasn't one of these things where
11 you used a fake name. It wasn't a peer-to-peer network
12 sharing like Napster or Livewire or one of those
13 things. This was a website that was operating from all
14 appearances just like any other public website. You
15 used a credit card, and I think they said it functioned
16 like Amazon.

17 Mr. Ross, the computer constable from Toronto,
18 really didn't tell us much more than what we've already
19 talked about with respect to what's relevant to this
20 case although there were pretty pictures of all the
21 computers and the servers and the burners that they had
22 in Toronto. And that proves that it was a big deal in
23 Toronto, but in a lot of ways what that does is it goes
24 again to prove that this, from all appearances, was a
25 legitimate operation.

1 Mr. Bone, the postal inspector who was in charge
2 of this case in the United States, told us there were
3 over 10,000 U.S. customers. He didn't know what "FKK"
4 meant. And he verified and he told us basically when
5 he looked at the invoices, I think he was the first one
6 who looked at these invoices, that Mr. Silva had used
7 his own name and all that sort of stuff. By the way,
8 the reason we asked about FKK, if you look at the
9 history of nudism that's on many of these videos, I
10 don't think it's on all of them, it's on many of these
11 videos, you'll see that in one of those videos they
12 describe that "FKK" stands for a German word that is
13 related to nudism in German, and they have a definition
14 of it there.

15 What Mr. Bone begins to do is he says, Look, you
16 know, we had these invoices and they identified Gerald
17 Silva. How? Because he used his name and he used his
18 address. That's how.

19 One of the sort of tensions in this case is that
20 the Government says, Oh, Mr. Silva made up this whole
21 thing about the PowerPoint, did all this stuff to cover
22 his tracks. In one of the arguments I want to make to
23 you throughout this case is Mr. Silva did everything
24 completely above-board. He used his name. He used his
25 address. He used his regular e-mail. He could not

1 have been more above-board about what he was doing.
2 And if he ever thought for a single second that what he
3 was doing was getting child porn, I submit to you, he
4 wouldn't have gone about doing it this way, by going on
5 a public website where he had to know there would be a
6 record of what he did, where he used his own name, his
7 own address, his own e-mail, his own telephone number.

8 I thought Mr. Donnelly hinted at the fact that
9 he was using wi-fi because it wouldn't give his
10 Internet address. I would suggest to you it doesn't
11 matter whether you give your Internet address or not.
12 What he gave was all the identifying information about
13 himself from start to finish. This was a man who has
14 been in the field, depending upon how you count it, 30
15 or 40 years depending on whether you count the Boy
16 Scout time or not. Not quite that, but at the time of
17 the arrest maybe 28 to 38 years.

18 He's in the field and the Government wants you
19 to believe that he knowingly picks up child pornography
20 not once, not twice, but makes 22 orders using his own
21 name. I would submit to you that that is inherently
22 absurd that he would do it so much out in the open,
23 particularly somebody who has been in law enforcement
24 by that point for seven or eight years.

25 What else does Mr. Bone tell us? Mr. Bone in a

1 lot of ways confirms -- many of the Government
2 witnesses in a lot of ways confirm Mr. Silva's point of
3 view because they confirm that he's telling the truth.
4 They confirm that he used his own name. They confirmed
5 that he used his own identity. That's what they do.
6 They don't prove anything to the contrary at all.

7 Mr. Psyllos was the local computer person. He
8 told us that Mr. Silva had access to the Azov site or
9 tried to access the Azov site for a couple of years,
10 but he didn't know how often. He told us about the
11 PowerPoint document. He told us that it had been
12 created on four different dates, and he explained the
13 creation date was just the date on which it first
14 appears in that directory. But pretty much Mr. Silva
15 confirmed for you in his testimony today that, yes, it
16 probably was the summer of 2010, I think it was, when
17 he first created that and that was because that's when
18 he got the PowerPoint.

19 Now, the next witness I think was Mr. Connelly.
20 I'll come back to him a second.

21 They then called Christine Imbriglio, the
22 Department of Corrections employee. And I guess she
23 was called to prove that it was a rouse that Mr. Silva
24 was creating this PowerPoint, that it was all
25 make-believe because he never got permission from the

1 Department of Corrections. But I would say to you,
2 you'll have the Department of Corrections policies
3 there, but more important you'll have her testimony.
4 And the thrust of her testimony was, I think, and it's
5 my recollection, you'll have to sort of assess it on
6 your own, two things. One was that if it didn't deal
7 with the Department of Corrections, you didn't need
8 permission; and two, if you're going to make a
9 presentation, you have to give them ten days notice.
10 So we were nowhere in a position where even if
11 Mr. Silva was going to do it as a DOC employee that he
12 had to give them notice.

13 Then the Government called Ken Bell. You know,
14 look, both sides cull out of the evidence what we can.
15 And the Government takes a look at the Ken Bell e-mails
16 and says, Look at this long e-mail, look at the doubts
17 Mr. Silva expressed about the Azov website. He did
18 express doubts. He was concerned about what was
19 happening. He explained to you why he was concerned
20 about what was happening. Even Ken Bell didn't know by
21 May 11th or 12th when he got those e-mails, and maybe
22 even by later in June when he got the final e-mail,
23 that the Azov website had been shut down.

24 But what the Government doesn't focus on is
25 there's an e-mail back from Ken Bell after the first

1 e-mail where Mr. Silva says, "Give me your address; I
2 wants to make sure I'm sending this to the right
3 person," where Mr. Bell says to Mr. Silva, "You guys
4 could probably teach the course," because there's also
5 a little colloquy in there about going to a seminar.
6 And what does that tell you? It tells you a couple of
7 things. It gives you an insight as to how Ken Bell
8 views Mr. Silva. It gives you an idea that he has a
9 positive view of him. It gives you an idea that
10 Mr. Bell sees Mr. Silva is experienced in this field,
11 knows what he's talking about, and it completely
12 buttresses the whole point I would like to make to you
13 that it's absurd to think Mr. Silva would go ahead and
14 buy child porn in his own name, make 22 purchases
15 knowing all that he knows. It just doesn't make any
16 sense, I would submit to you.

17 And the notion that he then creates this whole
18 artificial world to explain this away is even more
19 fantastical, I would suggest to you.

20 The Government's view appears to be that the
21 e-mails to Ken Bell and the PowerPoint were all a rouse
22 to create an explanation for his possession of the Azov
23 tapes. First of all, none of that explains why when he
24 does all this he uses his own name.

25 The Government says, Oh, he didn't tell Mr. Bell

1 about his purchasing the Azov tapes. Why would he
2 contact Mr. Bell at all if he thought -- and bring his
3 name into the picture if he thought he was doing
4 something wrong with the Azov tapes?

5 There's another point I would just make, and
6 I'll sort of try and anticipate the Government's
7 response. The Government says, well, by this point, by
8 the time he sends the e-mail to Ken Bell, he knows that
9 Azov's been arrested, that they've executed the warrant
10 and that he knows he's on notice then and he's just
11 trying to cover his tracks. The Government's point
12 also is that while he's trying to cover his tracks, he
13 keeps all this Azov material and he keeps it probably
14 for I think about a year-and-a-half or so under the
15 Government's theory after he supposedly knows it's
16 child porn.

17 Now, the Government is going to come back and
18 say, well, he knew that he couldn't erase the computer
19 records, the fact that he ordered these things. No, he
20 couldn't. That's absolutely true, but that goes back
21 to the first question, why would he ever, why would
22 Gerald Silva, a probation officer in the sex offender
23 unit, ever order something that he thought was child
24 pornography using his own name, sending it to his own
25 address. It just makes no sense at all.

1 And you know that he knows a fair amount about
2 this not just because he's given you some insight into
3 who he is by his own testimony, but because Ken Bell in
4 the e-mail back -- this is where we're talking about
5 which parts of these e-mails do we emphasize -- Ken
6 Bell says, "You and Heidi could probably teach the
7 course," Heidi being his work partner.

8 I want to talk a little bit about Mr. Connelly's
9 testimony. Mr. Connelly talked about what happened
10 when he went to the house and he effectuated the arrest
11 and all, but let's talk about some of the other things
12 he also talked about.

13 First, there's no dispute really about the vast
14 majority of what happened when they got to the house.
15 Mr. Connelly says Mr. Silva gave him a bunch of
16 information. Mr. Silva says I gave Mr. Connelly a
17 bunch of the information. Not only did I give him the
18 information about buying from Azov, I gave him access
19 to my account. I signed the form that they could have
20 access to my e-mail account. I told them about the
21 presentation. I told him about the Ken Bell letters.

22 Everybody seems to agree on both sides that
23 Mr. Silva was totally candid with Mr. Connelly about
24 all this stuff. There are some differences in
25 recollection, apparently, about what happened at these

1 meetings, but I would submit to you at the end of the
2 day they basically say, we came there, we asked him
3 questions, he answered our questions and he told us
4 everything he had done, including the fact that he was
5 a nudist, too.

6 What else does Mr. Connelly tell us? He talks
7 about the difference between child pornography and
8 erotica, and he said both dealt with sex and all that
9 but that child erotica was a little bit different. He
10 talked about whether there was a plot or a story line
11 and these things. He talked about how the pictures
12 were formed, things like that.

13 Then he said to us -- and let me back up for a
14 second. The Government has to prove to you that these
15 films constitute a lascivious exhibition of the
16 genitals. It's not enough for them to prove to you
17 that, at least if you accept Mr. Connelly's definition,
18 that they were child erotica. It's not enough to prove
19 that they were offensive. It's not enough to prove
20 that they were disturbing to you. It's that they were
21 whatever the term "lascivious" means, and you've got
22 these guideposts that we're going to come to in a few
23 minutes.

24 Mr. Connelly said there was no plot in the Azov
25 films, but there was a story line in a lot of the Azov

1 films. There were story lines about following the
2 actors. They're not different than I would submit than
3 travel logs or anything else, except that people were
4 nude here.

5 What's different about these pictures is that
6 the boys were nude. And we have to overcome, if we're
7 going to look at this objectively, I would submit to
8 you, a couple of things. For probably many, many
9 people, maybe not all of us, but for many, many people,
10 we're not used to seeing people nude. It's just not
11 the way it is in this country. It might be different
12 in some places, but we're not used to it.

13 The second thing we ought to be upfront about,
14 and I would implore you to put aside when you get to
15 deliberations is we're not used to seeing nude boys.
16 And it would be pretending that there's -- it would be
17 ignoring a pink elephant in the room to not say that
18 there's a problem with homophobia in our society.

19 All I can ask of you is to put all that aside
20 when you try and make an assessment about whether or
21 not these films are nudist films generated out of
22 Eastern Europe or whether they're lascivious.

23 Most of the films you can see just about all of
24 the boys. Now, obviously if you're seeing the front of
25 the boy, you can't see the back; and if you're seeing

1 the back of the boy, you can't see the front, but these
2 are not films where all you see is a woman's breasts or
3 a boy's genitals. You see the whole boy in virtually
4 all of the picture. When you see them on the bed doing
5 sit-ups, you see all of the boy. You see the boys'
6 faces in virtually every depiction unless their back
7 happened to be turned to you. I would suggest to you
8 that that is very different than what you would expect
9 if you were looking at just lascivious films.

10 Mr. Connelly acknowledged, I don't think there's
11 any dispute, there's no sexual intercourse in these
12 films, but it's more than that, I would suggest to you.
13 There's just no sex in these films. There are boys
14 playing around naked.

15 One other comment I'd like to just mention
16 briefly that Mr. Connelly made, I asked him if he had
17 an opinion about two films. One was "Pool Buddies," I
18 think the other was "Mountain Men." He said he had
19 seen them briefly, but he'd have to review them in more
20 detail to have an opinion as whether they were erotica
21 or pornography. You can't tell just from looking at
22 the cover of these films what they are, I would suggest
23 to you.

24 The final witness, of course, was Mr. Silva. I
25 know you just heard him this morning and I don't intend

1 to spend a lot of time on his testimony, but I do want
2 to make certain points to you about his testimony.

3 Maybe the biggest point is the Government says,
4 oh, he's making this all up. There's his video room.
5 He liked to sit there and relax and watch videos.

6 Since he was 18 years old, and he's 59 now, he
7 has done some of the tough work in our community. He
8 has worked with the Boy Scouts. He worked at Camp
9 Eckert or the Eckert Foundation. It was Camp E Huntlee.
10 He worked at Kent County Mental Health. He works at
11 Gateway, and then he works as a probation officer with
12 sex offenders, working with some of the most difficult
13 populations that we have in this state. He dedicates
14 his life to that and has almost 40 years of service
15 working with that population right now. Never once
16 before this event has he been charged with anything or
17 convicted of anything. He tells you that and it's
18 uncontradicted in the record.

19 He has a reason for looking at these materials.
20 He tells you that he wants to leave a legacy. He's
21 putting in an enormous amount of time.

22 On the one hand on the one level -- he probably
23 doesn't want me to say this. At one level, it doesn't
24 matter why he had these materials. On one level, it
25 just matters were they or were they not lascivious, and

1 I would suggest to you that they were not lascivious
2 and I'll go into the reasons in just a second.

3 But look at who he is and it does apply to the
4 question of what type of knowledge he had. Look at who
5 this person is, look at what he's done over 40 years.
6 It's sort of remarkable, I would suggest to you, that
7 when you work with that field that somebody hasn't said
8 something about you before this. He's never been
9 charged, much less convicted, of anything else. He's
10 had a stellar record of working with the toughest
11 people our society can produce.

12 And now, the Government comes in and says here's
13 some films. There's no sex in the films -- you know,
14 when I say there's no sex, not only is there no sexual
15 intercourse, there's no masturbation in the films,
16 there's no oral sex, there's nothing except nudity I
17 would suggest to you.

18 So when you think about Mr. Silva, think about
19 what he's done and think about whether it makes any
20 sense that this man suddenly when he's 57, or something
21 like that, decides to go off the deep end and start
22 ordering in his own name child pornography and turn
23 everything he's built and done for the last 35 or close
24 to 40 years upside down.

25 I want to talk about the exhibits briefly. The

1 postal packing, there's no dispute that it was mailed
2 in interstate commerce and that it was mailed to
3 Mr. Silva. The Miranda rights form and the consent to
4 search online, they just established that Mr. Silva
5 cooperated from the beginning and didn't conceal
6 anything from the Government. They support his
7 decision. They don't contradict it.

8 The receipts from Azov that were introduced in
9 evidence that we've gone through, they verify, again,
10 that he didn't conceal his identity. He signed the
11 date that he was arrested. It wasn't even a matter of
12 thinking about what's best for me. He signed them, he
13 acknowledged them without any debate.

14 The pictures of his home, yeah, it doesn't look
15 like "Home Beautiful." It also was clear that he
16 wasn't concealing anything, I would submit to you.
17 Surely nobody is suggesting he be convicted because his
18 home was a little messy.

19 The pictures of the search in Toronto just had
20 no bearing, I would submit, on whether Mr. Silva is
21 guilty of anything.

22 The e-mails, they just again establish that
23 Mr. Silva used his own identity. The screen shots of
24 the catalogs, if you look at those screen shots, and
25 you've got them in evidence that tell you what's

1 supposed to be in these videos give you more of a
2 picture than what the Government would lead you to
3 believe. Some of these kids played again and again.
4 There were followings of these people. It wasn't a
5 "War and Peace" trilogy or a novel, but there was a
6 story and there was some people followed particular
7 actors.

8 The DOC policies, I submit, the Department of
9 Corrections policies support more than undermine
10 Mr. Silva's position. The chart that the Government
11 introduces basically connects which DVDs go to which
12 allegations.

13 The notion that this PowerPoint is invalid
14 because Mr. Silva didn't tell people about it and sort
15 of the implication was he had to tell the people at the
16 Department of Corrections I would suggest is undercut
17 by the DOC policy and Ms. Imbriglio's own testimony.
18 Even beyond that, he had no obligation to tell anybody
19 what he was working on. So he's working on it.
20 There's no doubt that he had been working on it for a
21 while, and you can take a look at the slides. They
22 obviously took a lot of work to produce.

23 So now I want to turn to what I think is sort of
24 the critical issue in this case. I'm going to move a
25 little bit because I have a couple of notes that I'd

1 like to put up for you.

2 The issue is were the images lascivious. Isn't
3 that really the heart of this case? I apologize for
4 moving back here, but I hope that putting a little bit
5 up here you can follow my argument a little bit with
6 respect to this.

7 First, you have to consider the overall content
8 of the material. You'll see that in the instructions.
9 The Court identified six factors which can be
10 considered. The Court didn't say these were the
11 exclusive factors, but they said these are six factors
12 that you could consider. The first one was: Are the
13 genitals the focal point of the image? Now, obviously,
14 this is my shorthand way of trying to argue this. One
15 is I would say to you there were no zoom shots of the
16 genitals. There just weren't. In fact, there were
17 some zoom shots of faces occasionally, but they didn't
18 zoom in just on the genitals. You could see the
19 genitals in most of the pictures but they didn't zoom
20 in on the genitals. You almost always saw the whole
21 person. Usually the face was visible. So the notion
22 that -- you didn't see hours and hours of just the
23 genitals. What you saw was video showing pictures of
24 these kids and, yeah, the genitals were visible, but it
25 wasn't just zooming in on the genitals.

1 Now, another fact the Court said you could
2 consider was is the situation -- is the setting
3 sexually suggestive. Not only is there no sex, actual
4 sex, there are no sex toys, there are no condoms,
5 there's no dim lighting.

6 The demeanor of the boys. When you look at
7 these videos, and I submit you can't get it out of just
8 looking at a single shot, almost uniformly the demeanor
9 of the boys in these videos was playful, laughing,
10 smiling. It was what you would expect out of young
11 boys. And if they had clothes on, you wouldn't think a
12 thing of these videos. You would think they were just
13 videos of kids horsing around, whether it's in the
14 shower, in a pool, on the beach or on a train trip.
15 What makes everybody who is not used to nudism pause is
16 that these boys didn't have clothes on. But otherwise,
17 these films would be remarkably unremarkable to create
18 a bad phrase. I mean, they were just normal films, I
19 would suggest you.

20 And when you look at how these boys were
21 reacting, maybe they could have coached the boys for a
22 scene or two. But look at the totality of these films,
23 and what you see is the boys consistently laughing and
24 smiling. And that's the opposite of a sexually
25 suggestive scene. Even the scenes where the boys were

1 on the bed or in the train bunks, in the bunks on the
2 train I would suggest you see boys horsing around. You
3 don't see them sort of snuggling together in a train
4 bunk or something like that. You see them fooling
5 around, playing in a bunk on a train. You see them
6 playing on the bed, but you don't see sex. You do see
7 a massage maybe a few different times, but I would
8 suggest to you Mr. Donnelly says the massage went right
9 down to the bottom of the boy's back, not just about to
10 the buttocks line. Well, that's right. The massage
11 didn't go to sexual area. That's the whole point. The
12 massage was not sexual. Not every massage is sexual.
13 A massage certainly could be sexual but the massages
14 that you saw were not. They were not of the genitalia.
15 They were not sexual. You didn't see him rubbing the
16 buttocks, you didn't see him rubbing the genitals. You
17 saw a massage of the back. Surely we can't say that
18 every massage of the back becomes a sexual event.

19 The food scenes, the word I used was silly. I
20 think there are other ways you could describe the food
21 scenes including gross and sort of at a certain age you
22 may think food fights are beyond silly, they're
23 disgusting and why do them. But whatever they are, I
24 would argue, they are not sexual. How anybody could
25 infer sex from that food scene I would suggest to you

1 is a real stretch. It just wasn't about sex.

2 Those were two of the factors that we've talked
3 about.

4 The Court also said you could consider whether
5 the child was in an unnatural pose or inappropriate
6 attire. None of these were posed shots. I mean, we've
7 all seen posed shots, mostly with adults. The "Sports
8 Illustrated" shots, we know what a posed shot is for
9 sexual purposes. You don't even have to go to that.
10 You can go to all the ads that Calvin Klein runs, or I
11 think Mr. Connelly mentioned the Speedo bathing suits.
12 We know what a posed shot is. You didn't see posed
13 shots there. You didn't see boys modeling their
14 genitals, closing their genitals, things like that.

15 Inappropriate attire. You can make something
16 more sexual by putting these boys in things like tight
17 Speedo trunks and trying to highlight their genitalia.
18 It's your recollection that controls, but certain many
19 of the boys when they were in bathing suits had regular
20 bathing suits on and some had apparently smaller
21 bathing suits on. What I would suggest to you is that
22 what you did not see was posed shots. You saw the kids
23 playing around and, as I said to you, I think if you
24 saw these kids with clothes on you would think nothing
25 of it.

1 You look at another criteria that the Court
2 mentioned was, was the child fully or partially clothed
3 or nude. Well, clearly the boys in this case were
4 nude, but also clearly nudity is not enough. You need
5 something more than mere nudity to establish
6 lasciviousness. I think you'll see that in the
7 instructions; you heard that in the instructions.

8 These are nudist films. Of course the boys
9 would be nude. It would be sort of like contradictory
10 if the boys weren't nude. Of course they're going to
11 be nude. They're nudist films.

12 Now, some of you might say to yourself, I object
13 to nudist films, but that's not the issue. You have an
14 absolute right to say I don't like nudist films, I
15 don't ever want to see nudist films. I don't like the
16 nudism movement. You have that total right. But you
17 don't have the right to convict Mr. Silva because he
18 received or possessed nudist films.

19 Another factor is whether or not the images
20 suggest sexual coyness or a willingness to engage in
21 sexual activity. And there again, I would suggest that
22 what you saw was the boys playing. You didn't see
23 anything suggesting sexual coyness or a willingness to
24 engage in sexual activity. There just wasn't anything
25 like that, I would suggest.

1 Then finally, whether the image appears intended
2 to elicit a sexual response in the viewer. I would
3 suggest that the better view of these movies, these
4 videos is that they're nudist not that they're designed
5 to elicit a sexual response. There was nothing in
6 these movies except the nudity that would be a basis
7 for inferring sexuality. There were so many more
8 things that could have been done. We've all seen ads,
9 we've all seen movies where with or without nudity
10 there's a suggestion of sex, and that wasn't what you
11 had in these cases. I think what you had was
12 12-year-old, 8-year-old, 16-year-old boys playing
13 around.

14 Now, those are six factors the Court identified.
15 The Court also said there are other factors that you
16 could consider. I want to suggest to you what some of
17 those other factors are.

18 First, there are no scenes of adults having
19 contact with the kids. There's no sex between these
20 boys and anybody, much less any situation where you've
21 got adults using these kids for sexual purposes. You
22 don't see these boys and adults massaging each other or
23 anything like that. Adults just aren't in these film.
24 You see youths playing with youths.

25 The vast majority of this footage was

1 group-oriented. There wasn't a romantic scene. And
2 when there wasn't a group, you had a boy with a
3 chicken, for example. I would say to you that whatever
4 it was, it wasn't sex.

5 The videos all seemed to come from Eastern
6 Europe, and I would encourage you, you'll have as
7 exhibits the cases in which these videos came in. Take
8 a look at these cases. They'll give you more, I
9 submit, of an understanding or a feel of the fact that
10 these were nudist videos.

11 There was clearly some sound but not at a higher
12 speed. The point that I wanted to bring to your
13 attention, the nudity didn't appear to be an issue with
14 the boys. Remember how the boys acted among
15 themselves. Mr. Donnelly talked about the shower
16 scene. Think about the scenes where the boys are
17 dressing or undressing. The boys don't focus on each
18 other's genitalia. They don't seem awkward about that.
19 They seem to be horsing around, but you don't see them
20 staring at each other's genitalia. You don't see them
21 staring at each other when they're dressing or
22 undressing. You see them doing things in the shower
23 and throwing water on each other while in the shower.
24 No different, I would submit, that probably happens in
25 locker rooms in high schools and colleges all around

1 the country. But you didn't see any focus just on the
2 genitalia there. What I would suggest to you is what
3 these films depict is European nudism.

4 And the last video that we saw, you remember we
5 had a problem with one of the videos and it ended up
6 being the last one we saw. You saw the interviews of
7 the boys. Not all boys, but three boys gave
8 interviews. You saw subtitles. Think about those
9 interviews. Those interviews, I would submit to you,
10 shed more light on what was going on. These kids who
11 were enjoying themselves, nobody could coach those kids
12 in that maybe in saying the words but not in the acting
13 and appearing the way they did. This doesn't reflect
14 the exploitation of children in these films, I would
15 suggest to you, and interviews of boys having a good
16 time, talking about what movie they were seeing, things
17 like that.

18 The movies did have both an introduction about
19 the legality of the movies and some of the movies had
20 this history of nudism. I think those are factors that
21 you can consider, I would urge you to consider. That's
22 how these movies were being marketed, not as child porn
23 but as part of nudism. And look at that history of
24 nudism if some of you have questions. It's not
25 terribly long. We went through it once, but it talks

1 about the whole history of nudism mostly in Europe and
2 the United States, mentions of India, I think, and a
3 few other places. But I would submit to you that it is
4 instructive for us.

5 The way these films were marketed, they were
6 marketed through the Web in a very above-board fashion.
7 It's not like you had to go to a dreary bookstore, not
8 like you had to use some file sharing network like
9 Napster or LimeWire to access these things. You got
10 them like any other product you would get on the
11 Internet.

12 I would argue to you that if there were a single
13 word to describe these films it would not be "sexual."
14 It would be "boring." And in the end, Mr. Connelly
15 said that one of the factors that you could consider
16 was the end goal of the user. One of the pieces -- and
17 I think the Court told you that you can consider the
18 evidence that's been produced or not been produced. I
19 asked Mr. Silva if he'd ever used these films for
20 sexual pleasure. He denied it. Not only did he deny
21 it, you've no evidence of that. There's not a single
22 clip suggesting -- of him doing anything sexual or with
23 respect to these films. There's not a single clip or
24 anything suggesting that Mr. Silva in any way was using
25 these films for a sexual purpose.

1 What the Government has is a lot of videos of
2 nude boys, but that gets back to the fact, I would
3 submit to you, that it's just nudity and nothing more.

4 Now, I ask you to look -- I'm sure you listened
5 closely to the Judge's instructions. Look at them,
6 you'll have them there, about the Government's
7 requirement to prove knowledge. The Government has an
8 obligation not only to prove that these materials were
9 lascivious, and I submit to you that they haven't. I
10 submit to you they can't. But they also have to prove
11 that Mr. Silva knowingly received them. One argument
12 I've already made is it's just absurd to think that
13 Mr. Silva given his background would now suddenly at
14 age 57 or so, after a career of commitment, go into
15 child pornography. And if he did do that, to suggest
16 that he would do it in his own name and his own home --
17 I mean Boy Scouts from 18 to 28; Eckert from about 28
18 to 35; Kent County Mental Health Center from about 35
19 to 40; Gateway from about 40 to 49, and since that time
20 a probation officer. And you can be sure that at each
21 of those jobs when he moved around, somebody checked
22 him, somebody vetted him, somebody looked into his
23 background, and somebody had wanted to know was this
24 somebody appropriate we could hire to work with kids or
25 finally when we get to the Department of Corrections

1 that could work with the Department of Corrections.
2 And each time he gets hired by somebody new to work
3 with a difficult population. And now all of a sudden
4 he changes stripes at age 57?

5 It's also just absurd, I would suggest to you --
6 first I would suggest to you it's absurd to think that
7 he would change stripes at age 57. There's just no
8 basis for it. There's nothing else, you have nothing
9 in this record to suggest that he's involved with child
10 pornography except his possession of a bunch of nudist
11 videos. You don't have him acting out on these videos.
12 You don't have videos of him doing anything. You don't
13 have any evidence of his contact with any kids. You
14 don't have anything at all except the Government going
15 into his house based not on something that he did here,
16 but based on the fact that they got a list of people
17 who were customers and that he was one of over 10,000
18 customers in this country on the website. And then
19 based on that list they go into his house and they
20 seize a bunch of films that are nudist films. And
21 they're nudist films. That's what they are, I would
22 suggest to you. Take a look at these criteria.

23 That's the argument I would make on his behalf.
24 But even if you think the worst of him and you think
25 somehow or another he has gone over to the other side

1 or something, it's just absurd to think that somebody
2 who is in law enforcement who is supervising people who
3 are sex offenders is then going to start to go into the
4 child pornography field in such an above-board way
5 using every bit of his own identity, his own house, his
6 own name, his own e-mail, everything.

7 Finally, of course, the Government has to
8 prove -- they have to prove, in any event, that these
9 images were lascivious. And for all the reasons I've
10 just tried to go through with you, I would submit to
11 you that they are not lascivious.

12 I've talked to you a little bit about the fact
13 that Mr. Silva is a nudist, that these came out of a
14 nudist community. I would argue to you that what you
15 really saw was nudist films. Now, there's all this
16 back and forth about why did Mr. Silva create this
17 PowerPoint, why did he send a letter to Ken Bell, all
18 that sort of stuff. Look at the PowerPoint, ladies and
19 gentlemen. It took some real work to do that. It's
20 not a finished product. Mr. Silva testified to you
21 clearly that he expected it to be much more. But it
22 seems like an awfully strange way to make up an
23 explanation for why you possess child pornography to
24 make a whole PowerPoint that references the Azov stuff.

25 When you look at the PowerPoint, particularly if

1 you look at the notes on the PowerPoint but also some
2 of the slides, you'll see references to Azov Films.

3 I would submit to you that that PowerPoint is
4 exactly what Mr. Silva told you it is, it's the
5 beginning of his effort to leave a legacy. But beyond
6 all that, beyond all that, the question is always has
7 the Government proven beyond a reasonable doubt that
8 these films are lascivious. The lascivious issue
9 governs each of the seven counts. In other words,
10 there's no difference in the definition of
11 "lasciviousness." It applies equally to all the
12 counts. If you find that these videos were not
13 lascivious, then Mr. Silva is simply not guilty.

14 I just want to respond briefly to a few of the
15 comments that Mr. Donnelly made. He talked about the
16 video of the three boys in the shower. I would suggest
17 to you that what's remarkable about that -- not
18 remarkable but when you look at that shot, what you see
19 is three boys in the shower. You don't see them
20 focusing on each other's genitalia. You see them
21 horsing around in a shower. As I said to you, I would
22 submit to you that that's what takes place in boys
23 locker rooms. There wasn't even any towel snapping or
24 anything like that. It was just playing around with
25 the shower and aiming the water. And even that wasn't

1 focused on the genitalia. That's what these films
2 were. They were not focused on the genitalia.

3 There was a reference to Mr. Silva's interest in
4 the case. Of course he has an interest in the case.
5 He spent 37 or 38 of the years of his life, now almost
6 40 dedicated to helping, as I said, in working with the
7 most difficult people in our community. And it would
8 be naive to say he doesn't have an interest in the
9 case. But what I would submit to you is also take into
10 account his background, take into account who he is
11 when you assess did he knowingly receive and possess
12 child pornography.

13 In the end, you really have to just look at the
14 DVDs. You have to think about whether Mr. Silva had
15 knowledge, but you basically have to look at the DVDs,
16 and I challenge you to find more than nudity in the
17 DVDs. What there is, is nudity and a lot of nudity.
18 If I have offended people by playing these videos
19 yesterday, or whenever it was, I think it was yesterday
20 or the day before yesterday, I apologize. You'll have
21 the videos back there. If you want to look at more of
22 them, you can. The point is you have to look at these
23 things in an overall content sort of way. And when you
24 look at these, simply looking at a two-minute snippet,
25 I would suggest to you, is not enough. If you look at

1 these videos as a whole, what you see is hours and
2 hours of video and no sex. Simply no sex. Just lots
3 and lots of nudity. That's what you see. And there
4 has to be more than mere nudity. You don't see
5 intercourse. You don't see masturbation. You don't
6 see rubbing in the genitalia. You don't see oral sex.
7 You don't see any sex at all in these movies. All you
8 see, I submit to you, is nudity. And I hope that
9 persuades you that these films are not lascivious.

10 But finally I would say to you even if you are
11 not persuaded that these films are not lascivious, at
12 least I submit to you the Government has failed to
13 prove to you that they are lascivious. And if you're
14 not sure they they're lascivious, whether you like
15 these films or not, whether you like what Mr. Silva did
16 or not, whether you agree with his lifestyle or not, if
17 you're not sure -- and look. Look at his lifestyle.
18 We can stereotype all we want, but we can't convict
19 everybody of possession of child pornography because of
20 their work with Boy Scouts or because they're a man
21 working with young men. That's the stereotype that you
22 cannot fall into. He shouldn't be punished for
23 spending a lifetime working with young people. He
24 should at least be recognized for the contribution he
25 gave when you're getting to making the assessment of

1 reasonable doubt. And if in the end, even if we
2 haven't persuaded you that these movies are not
3 lascivious, I would urge you that the Government surely
4 hasn't persuaded you that they are. And if they
5 haven't persuaded you that they are, and if you're not
6 sure, that you've got some doubt about whether they're
7 lascivious or not, then you have to acquit. And for
8 that I'm asking you to acquit him of all charges.
9 Thank you very much.

10 THE COURT: Thank you, Mr. Mann.

11 Mr. Donnelly, do you have any rebuttal argument?

12 MR. DONNELLY: A few minutes, your Honor.

13 Folks, just a few minutes of your time just to
14 try to address some of the points Mr. Mann just made.

15 He went through on the ELMO some of the factors
16 he wants you to think about. When you have time to
17 deliberate on this case and you'll have the Judge's
18 instructions, there are those six factors, the first
19 six factors you're not required to find any of those if
20 you don't want to. There's certainly no minimum.
21 Certainly not all six of them need to be agreed upon by
22 you. They're just guides to help you determine whether
23 you agree or not that these pictures are lascivious.

24 And Mr. Mann pointed out a lot of things that we
25 don't dispute. You can say a million times, well,

1 there's no sex, there's no sex, there's no sex. Well,
2 Congress made it illegal to possess pictures, yes, of
3 graphic sex, but also of the lascivious exhibition of
4 the genitals.

5 So we go around in a big circle but we're back
6 at the question and you have to ask yourself as you
7 consider that, again, sorry if this is new for many of
8 you, but there are certainly normal sexual desires out
9 there and there's abnormal sexual desires out there.
10 And I think here you're seeing abnormal sexual desire,
11 and you have to see these pictures in light of that,
12 not in light of what those boys think. I told you in
13 my opening argument that those boys, they might be
14 genuinely thinking they're having fun. Who knows?
15 Skinny Eastern European kids, who knows where their
16 heads are at? Who knows what road they've come down to
17 get in front of those cameras for whoever is taking
18 those pictures? We don't know. But what we do know is
19 that you can look at those pictures and see that
20 they're intended and designed to please somebody. You
21 don't buy those videos because they give you
22 information about this or that. You buy them because
23 you like them. That's why you buy several dozen of
24 them, because you're hooked on them.

25 I suggested to you in my opening argument, go to

1 Exhibit 5A. You know what you can do? You can also go
2 to the other photo disk he bought, Exhibit 7A. That's
3 the one with the chicken and the cupcakes. And ask
4 yourself, he bought the video, ha-ha, is that boys will
5 be boys having fun? And that's why I'm sorry we showed
6 you that particular clip with the boy sitting on the
7 chicken, you know. And whatever weird sexual thought
8 is going on in the makers of these films, I submit to
9 you that that's what's going on in those pictures.
10 Look at the rest of them. Look how they're cropped and
11 framed. Why do you buy those? Why do you keep those?
12 Is this a normal website operating like Amazon? Might
13 have looked a little bit like it. Took your credit
14 card just like Amazon does. Why is a normal website
15 blocking law enforcement from accessing it? Look at
16 the products they advertise on there. Boy Joy porno
17 site. Normal website or lascivious website?

18 The Defendant's presentation, I think Mr. Mann,
19 I don't know if I heard it right or he slipped, said
20 his presentation began being created in 2010. July
21 9th, 2011, creation date of the earliest PowerPoint.

22 And he put in an enormous amount of time, 30
23 years of experience went into this PowerPoint. Come
24 on. You've used PowerPoint. Probably many of you
25 have. If you've used it, he got 33 slides. You'll

1 have them. Thirty-three by the time that Inspector
2 Connelly runs into him, gets his laptop pursuant to the
3 search warrant and Mr. Psyllos finds those PowerPoints.
4 There's 33 slides. Enormous work? There's no
5 research. There's no citation to authority. There's
6 no citation to psychologists and workers in the field.
7 No citations to the National Centers for Missing and
8 Exploited Children. Nothing. It's like a free-form,
9 free-thinking thing you could do in an afternoon. He
10 did it because the website had been shut down and an
11 explanation had to be made.

12 Now, did he behave against his own self-interest
13 holding onto those videos? I can't explain that to
14 you. He certainly didn't explain it to us. We do know
15 though that -- and I ask you again to go back to
16 Government's Exhibit 30, the e-mail to Ken Bell. Read
17 it carefully and say to yourself, okay. I've got a guy
18 over here buying dozens of these Azov films, opening
19 them up and watching them. Ask yourself, is that the
20 same guy that's in this e-mail? Spend a few minutes on
21 it. The answer is no. Completely different guy. The
22 guy in the e-mail is false. The guy behind and
23 enjoying the videos, that's the guy behind this case.

24 Mr. Mann put in his factors, the disclaimers,
25 the history of nudism. Do you think it makes it legal

1 if you put a little sign up at the beginning of your
2 child porn video that, well, folks, the United States
3 Supreme Court and Canadian Supreme Court looked at this
4 and bah, bah, bah, bah, bah, all been found perfectly
5 above-board. Do you think that makes a difference? It
6 makes a difference to you. You decide. Why do you put
7 that there? It's just cover, more cover.

8 You heard Inspector Bone and Detective Krawczyk
9 from Canada say they're not aware of any U.S. and
10 Canadian Supreme Court decisions. I think that strikes
11 your common sense. There's no Supreme Court decisions
12 out there saying this stuff is legal.

13 THE COURT: Let's wind it up.

14 MR. DONNELLY: Thank you, your Honor.

15 One last point, and I can't ignore it. Mr. Mann
16 raised it. He said the pink elephant in the room, we
17 can't ignore it, is homophobia. There's no pink
18 elephant in this room. The Government could care less
19 about the sexual orientation of anybody. It's about
20 pedophilia, sexual pleasure by looking at naked
21 children in different settings and in different ways.

22 Return a verdict of guilty. Thank you.

23 THE COURT: Thank you, Mr. Donnelly.

24 Okay. Ladies and gentlemen, you've heard my
25 instructions, you've heard the attorneys' closing

1 arguments. It's now time for you to go to the jury
2 room and to deliberate on the case.

3 The first thing I'm going to do is swear the
4 marshal before we send you into the jury room.

5 (Marshal sworn.)

6 THE COURT: All right. And also at this time,
7 ladies and gentlemen, I'm going to dismiss our two
8 alternate jurors. I do want to thank you for your
9 service. Alternate jurors are the unsung heros of
10 trial. You go through the entire trial but then you
11 don't get to deliberate. I'm sorry about that, but you
12 provide an enormous service simply by being here at the
13 ready at any time there is the need, and often there
14 is. So I'm going to let you two go at this time.
15 Thank you for your service. Hopefully you've acquired
16 somebody's phone number or something to find out when
17 the jury reaches a verdict what that verdict is. Of
18 course, if you don't, you can all call the Court and
19 they'll let you know. All right? So Charlie will give
20 you directions. Thank you very much, gentlemen.

21 (Alternates dismissed.)

22 THE COURT: Okay, ladies and gentlemen, Charlie
23 is going to show you to the jury room. In a few
24 moments, the exhibits will be brought into the room as
25 well as my written instructions and the verdict form.

1 Just get settled and Charlie will tell you in just a
2 moment that you can start deliberating. I just need to
3 do one thing with the attorneys before you actually
4 start. All right?

5 Charlie, would you show the jury into the jury
6 room.

7 (Proceedings out of the presence of the jury as
8 follows:)

9 THE COURT: Mr. Mann, if you could quickly
10 reiterate your objections. You don't need to restate
11 your arguments.

12 MR. MANN: I'll just incorporate all my prior
13 arguments. On page 12 of the instructions, you gave an
14 instruction that says: "It is for you, the jury, to
15 decide whether the material received" -- I'm sorry,
16 Judge. I may have the wrong page. "It is for you, the
17 jury, to decide whether the material received or
18 possessed by the Defendant meets the definition of
19 sexually explicit conduct. If the Defendant
20 incorrectly believed what does and does not constitute
21 child pornography, that does not relieve him of the
22 responsibility as long as the Government has proven the
23 elements I outlined above."

24 I'll incorporate my prior arguments, note
25 briefly that I believe it's a comment on the

1 Defendant's testimony and also diminishes the
2 Government's burden with respect to proving knowledge.

3 I also object, Judge, on page 27 of your
4 instructions you told the jury that in paragraph five
5 of the instruction on witness credibility, "whether the
6 witness had anything to gain or lose from the outcome
7 of this case. In other words, was the witness totally
8 impartial or did the witness have some stake in the
9 outcome or some reason to favor one side or the other."
10 I object to that as highlighting the Defendant's
11 testimony, as being a comment on the Defendant's
12 testimony, and I would submit that that violates the
13 instructions of the United States versus Dwyer, 843 Fed
14 2d, 60 and would just incorporate my prior arguments.

15 THE COURT: All right. Are there any other
16 objections to any of the instructions?

17 MR. MANN: Only those two, Judge. And all of
18 those were argued previously.

19 THE COURT: Yes. Okay.

20 Charlie, you may tell the jury to begin
21 deliberations.

22 Any objections to the verdict form?

23 MR. DONNELLY: No, your Honor.

24 MR. MANN: No, your Honor.

25 THE COURT: Any objection to the instructions

1 being sent in to the jury?

2 MR. DONNELLY: No, your Honor.

3 MR. MANN: Not to them being sent in, no.

4 THE COURT: Charlie, the verdict form and the
5 instructions. The exhibits will be in momentarily.

6 MR. MANN: May I just ask, your Honor, your
7 Honor caught a --

8 THE COURT: I made the change. It's typewritten
9 in and I've substituted the page.

10 MR. MANN: Thank you.

11 THE COURT: So now if counsel could come forward
12 and review the exhibits.

13 (Recess taken at 4:10 p.m.)

14 THE COURT: We're on the record. I understand
15 the jury has reached a verdict. Charlie, if you could
16 show the jury in.

17 (Proceedings in the presence of the jury as
18 follows:)

19 THE COURT: Ladies and gentlemen, I understand
20 you reached a verdict. Juror Number 9, I understand
21 you were the foreperson?

22 THE JUROR: Yes.

23 THE COURT: Please stand and hand the verdict to
24 the marshal.

25 Ms. G [REDACTED], could you just stand up for a

1 moment. Is this a unanimous verdict of the jury?

2 THE JUROR: Yes, it is.

3 THE COURT: You could sit down.

4 I am now going to pronounce the verdict and
5 publish the jury's verdict to the courtroom.

6 In the matter of the United States versus Gerald
7 Silva, as to Count I of the indictment, receipt of
8 child pornography, with respect to product ID Number
9 70246, "BF v2.0 FKK Waterlogged," we, the jury, find
10 the Defendant guilty.

11 As to Count II of the indictment, receipt of
12 child pornography with respect to product ID Number
13 70127, "Vladik Remembered, Volume 1," we, the jury,
14 find the Defendant guilty.

15 As to Count III of the indictment, receipt of
16 child pornography with respect to product ID Number
17 70132, "Vladik Remembered, Volume 2," we, the jury,
18 find the Defendant guilty.

19 As to Count IV of the indictment, receipt of
20 child pornography with respect to product ID 70248, "BF
21 v2.0, Paul and Calin's Home Video, Bucharest;" and BF
22 v2.0 Paul and Calin's Home Video Photo DVD," we, the
23 jury, find the Defendant guilty.

24 As to Count V of the indictment, receipt of
25 child pornography with respect to product ID 70249,

1 "Cutting Room Floor, Vlaviu;" and "Cutting Room Floor,
2 Vlaviu, Photo DVD," we, the jury, find the Defendant
3 guilty.

4 As to Count VI of the indictment, receipt of
5 child pornography with respect to product ID 70296,
6 "Raw Rewind, Volume 2," two disks, we the jury find the
7 Defendant guilty.

8 And as to Count VII of the indictment,
9 possession of child pornography with respect to product
10 ID Number 70188, "FKK Ranch, Party Games," and product
11 ID number 70194, "Scenes from Crimea, Volume 1," we,
12 the jury, find the Defendant guilty.

13 Now, do you wish to have the jury polled?

14 MR. MANN: Yes, please.

15 THE COURT: All right. I'm now going to poll
16 the jury.

17 Juror Number 1, is this your verdict?

18 THE JUROR: Yes.

19 THE COURT: Juror Number 2, is this your
20 verdict?

21 THE JUROR: Yes.

22 THE COURT: Juror Number 3, is this your
23 verdict?

24 THE JUROR: Yes.

25 THE COURT: Juror Number 4, is this your

1 verdict?

2 THE JUROR: Yes.

3 THE COURT: Juror Number 5, is this your
4 verdict?

5 THE JUROR: Yes.

6 THE COURT: Juror Number 6, is this your
7 verdict?

8 THE JUROR: Yes.

9 THE COURT: Juror Number 7, is this your
10 verdict?

11 THE JUROR: Yes.

12 THE COURT: Juror Number 8, is this your
13 verdict?

14 THE JUROR: Yes.

15 THE COURT: Juror Number 9, is this your
16 verdict?

17 THE JUROR: Yes.

18 THE COURT: Juror Number 10, is this your
19 verdict?

20 THE JUROR: Yes.

21 THE COURT: Juror Number 11, is this your
22 verdict?

23 THE JUROR: Yes.

24 THE COURT: Juror Number 12, is this your
25 verdict?

1 THE JUROR: Yes.

2 THE COURT: Thank you, ladies and gentlemen.

3 The clerk will file the verdict form.

4 All right. Mr. Silva, I'm going to set
5 sentencing down in this matter for Friday, May 16th,
6 2014, at 9:30 a.m.

7 In the meantime, the Office of Probation will be
8 preparing a Presentence Investigation Report that I
9 will use for purposes of sentencing. I want to
10 encourage you to cooperate fully with the probation
11 officer in the preparation of that report so that I may
12 have all the information that I need in order to
13 conduct sentencing in this matter.

14 All right. State your positions with respect to
15 remand of the Defendant.

16 MR. DONNELLY: Yes, your Honor. As the Court
17 knows, there's a presumption that a defendant being
18 convicted by a jury of a serious felony like this
19 should be remanded, detained. In this particular case,
20 the Government acknowledges the Defendant has been out
21 on bail pending these proceedings, but because of the
22 potential sentence that he is facing, perhaps a serious
23 period of incarceration, the Government believes that
24 that would create an unreasonable risk of flight with
25 this particular Defendant. The Government is also

1 concerned about the Defendant's, for lack of a better
2 term, mental state that this verdict might cause on
3 him; and based even on his testimony here today about
4 his state of mind, the Government believes that it's a
5 concern that everybody will remain safe if he's
6 remanded. Thank you.

7 THE COURT: Thank you.

8 Mr. Mann?

9 MR. MANN: I object. He's been on bail for a
10 long period of time. There's been no incident of
11 misbehavior or anything like that while he's been on
12 bail. He's got strong ties to the community. He owns
13 a home here, and his brother is here. I think a second
14 brother is here, too. He's got no record whatsoever,
15 Judge. There's nothing at all to indicate either a
16 danger to himself or to others based on the period of
17 time that he's been released. I would urge the Court
18 to continue him on the same release. Pretrial services
19 will monitor him, obviously. They keep close tabs on
20 him. It just seems to me it's counter-intuitive that
21 he would go off and do something now, Judge. He's been
22 aware of what was going on for a long time.

23 THE COURT: All right. These are difficult and
24 close calls, Mr. Silva. I have consulted with your
25 probation officer. He said you've been compliant with

1 conditions of pretrial release; however, you are facing
2 a long sentence and I know you know that. I am going
3 to order that you be detained pending sentencing.
4 Mr. Mann knows that he will have the ability to file a
5 motion to reconsider that and I'll consider that
6 motion; but for all the reasons stated by the
7 Government, I think the better decision is to order you
8 to be detained pending sentencing so I'm going to ask
9 the marshal to do that.

10 Ladies and gentlemen, your work here is
11 completed so I'm going to dismiss you at this time. I
12 am going to ask that Charlie show you back into the
13 jury room for a moment. I just want to come in and
14 personally thank you for your service now that the
15 trial is over. We'll have you on your way home very
16 shortly.

17 Charlie, will you show them into the jury room.

18 (Jurors dismissed.)

19 THE COURT: So ladies and gentlemen, we'll be in
20 recess.

21 (Court concluded at 5:15 p.m.)
22
23
24
25

C E R T I F I C A T I O N

I, Anne M. Clayton, RPR, certify that the foregoing is a true and correct copy of the transcript originally filed with the clerk on September 16, 2014, and incorporating redactions of personal identifiers in accordance with the Judicial Conference policy. Redacted characters appear as a black box in the transcript.

/s/ Anne M. Clayton

Anne M. Clayton, RPR

September 16, 2014

Date